IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPCIAL CIVIL APPLICATION NO. 2664 of 2001
with

799, 820, 823 all of 2000, 7501 & 7502 of 1999.
2395, 2665, 2668, 2671, 2672,2674, 2677, 2682, 2686, 2706, 2708, 2710, 2726, 2747, 2768, 2992, 2988, 3023, 3807, 4102, 4310, 4396, 4602, 4724 to 4730, 5058, 5154, 5215, 5436, 5626, 7234, 8943 all of 2001.

with

CIVIL APPLICATION NO. 9842 of 2001 in SCA 5626/2001

with

CA 10526 of 2001 in SCA No. 2988 of 2001
with
CA 10527 to 10533 all of 2001 in SCA No.s 4724 to 4730 all of 2001

CA 10522/2001 in SCA 4102/2001, CA 10524/2001 in SCA 4310/2001, CA 9840/2001 in SCA 3023/2001, CA 9845/2001 in SCA 5058/2001, CA 9841/2001 in SCA 3807/2001, 9839/2001 in SCA 5154/2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHAH JOLLY CHANDRAVADAN C/O JAIMIN K DESAI

Versus

STATE OF GUJARAT

Appearance:

MR PARESH UPADHYAY, MR NILAY ANJARIA, MR. SG PATEL, MR. HARUBHAI MEHTA, Senior Advocate with MR. RK MISHRA, MS MR VYAS, MR DP VORA, MR GM JOSHI, MR. IJ

V/S

MR SN SHELAT, ADVOCATE GENERAL with MR AD OZA, GOVT. PLEADER with MR PR ABICHANDANI, AGP.
MR YN OZA, Senior Counsel with MR. SHAKTISINH GOHIL.
MR DN PATEL for GPSC in all matters.

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 15/07/2002

ORAL CAV JUDGEMENT

1. This group of petitions are filed in the matter of appointment on the post of Lecturers in government colleges invoking the jurisdiction of this Court under Article 226 in special reference to Articles 14 & 16 of the Constitution of India. Scope of further division of these group matters is positively there on set of facts, but notionally it can be said that these petitions are moved by two rival groups viz one group is of candidates who are selected by Gujarat Public Service Commission ("GPSC" for short) for the post of Lecturer awaiting appointment. Another group is of those Lecturers who have been appointed as Lecturers on an adhoc basis till regularly selected candidates by GPSC are made available. Those petitioners who have been selected by GPSC for the post of Lecturers have prayed for a writ of mandamus for issuance of directions to the Government to appoint them on the post of Lecturers. The other group is of Lecturers already appointed on adhoc basis and are working as Lecturers in various government colleges in State of Gujarat. This second group viz. Lecturers appointed on ad hoc basis, can be further divided in sub-groups. Some of the Lecturers at present are serving as Lecturers in Govt. Colleges are party respondents in

Spl.C.A. No. 2395/2001 filed by GPSC Selectees. Six such Lecturers had approached this Court by filing Civil Application NO. 6633/2001 for joining them as party respondents in the writ petition filed by GPSC selected candidates and as per the order passed in the Civil Application, all of them are joined as party-respondents and are brought on record as such. State of Gujarat has moved Civil Applications to vacate interim stay granted in favour of the ad-hoc Lecturers. All these petitions involving similar issues are heard simultaneously and ld. counsel appearing for the parties in all these petitions including the ld. Advocate General Mr. S.N. Shelat have jointly submitted and contended that all these petitions and other civil applications filed can be disposed of by a common judgment.

2. I have heard ld. counsel Mr. Upadhyay for the petitioner as well as heard the respondents who have expressed their desire to submit before this Court. Some of the ld. counsel appearing for the ad hoc appointees have adopted the arguments advanced by ld. Sr. Counsel Mr. Harubhai Mehta and Ld. Sr. Counsel Mr. Yatin Oza. Ld. Counsel Mr. Paresh Upadhyay and ld. Counsel Mr. Nilay Anjaria have submitted their arguments for the petitioners selected by GPSC for the post of Lecturers awaiting their appointments, but mostly they have adopted the arguments advanced by ld. Advocate General Mr. S.N. Shelat appearing for the State and Ld. Counsel Mr. D.N. Patel appearing for GPSC.

3. The facts pleaded, if referred in brief, would be proper. However, with a view to get the main dispute crystallized and agitated before this Court, the case pleaded by GPSC selected candidates, if stated in brief, would be convenient. The case of the petitioner of Spl.C.A. No. 2395/2001 is that the GPSC, on the strength of the requisition made by the State Government, issued public advertisement for recruitment on the post of Lecturer in government colleges in different subjects. The advertisement was issued for 475 vacancies on 15.6.1998. The petitioner had applied in response to the said advertisement and it is contended that after due process of selection, the petitioner was declared selected by GPSC. That on 21.1.2000, name of the petitioner was recommended by GPSC to the Government for appointment on the post of Lecturer in the subject of History. On 20.8.2000, the Government called the petitioner for verification of certificates and testimonials etc. and according to the petitioner, he has also undergone that formality. Appointments on the post of Lecturer in government colleges are governed by

the Statutory Rules framed by the Government. All these posts are within the purview of the GPSC and, therefore, appointments on these posts (Class-II Gazetted) are to be made on the basis of the selection made by GPSC in accordance with Rules. The petitioner being eligible, was called for interview and after competing with other candidates, he was selected. Some Lecturers already appointed and working on ad hoc basis as Lecturers were also called for interview by GPSC, but were not declared successful. Some of them were rejected on the ground of over-age. This non-selection by GPSC was not challenged by such candidates at that relevant point of time. It is the say of the petitioner that there are government instructions to the effect that candidate selected by the GPSC should be given appointment without any delay and in no case, delay should be more than six months. There are more than 300 Lecturers who are working on ad hoc basis and are working subject to the availability of regularly selected candidate by the GPSC. The grievance of the petitioner is that though all the formalities are over, the government authorities are not giving appointments to the candidates selected by the GPSC and on the other hand, the ad hoc appointees are continued. Some of such Lecturers are continued who have either not appeared at all in GPSC Examination or have appeared but declared failed. The grievance of the petitioner is that various representations are made to the different authorities, but same have not brought any fruitful result in favour of the petitioner. That on or about 16.2.2001, GPSC took the matter seriously and asked the government to explain as to why appointments are not being made of the candidates selected by it. It is averred by the petitioner that not only the petitioner, but similarly situated candidates, inspite of the intervention by GPSC, are not given appointments and the State machinery is pulling on Lecturers appointed on ad hoc basis till regularly selected candidates by GPSC are available. It is the say of the petitioner that many of such ad hoc appointees had also appeared before GPSC for selection to the post of Lecturer and some of them are also selected by GPSC. Government has also issued a circular earlier on 27.8.1997 which is in consonance with various judicial pronouncements. In Annex.J (Page-36), the petitioner has pointed out that there are eight persons working as Lecturers in the subject of History on ad hoc appointment out of which one Ms. Jayshri Rathi (DKV College, Jamnagar) failed in Elimination Test itself and was not even called in interview by GPSC. Other seven Lecturers have failed in GPSC selection. Even then, as the petitioner was not appointed though selected, he moved this Court for a writ of mandamus and for other

consequential reliefs.

4. On the other hand, the petitioners of Spl.C.A. No. 2992/2001 are ad hoc Lecturers and it is contended that earlier petitioners were serving as Teachers in schools, but as they were otherwise eligible as per the norms and qualifications prevailing at the relevant time, they were appointed as Lecturers in colleges. The State machinery as was not able to appoint Lecturers duly selected by the GPSC, Education Department had invited them to join as Lecturers in colleges. It is contended that as they are serving as Lecturers in government colleges since years, they have lost their lien, seniority and all other opportunities of promotion etc. Hence, they should be regularised as Lecturer. It is the say of the petitioners that their entry in the cadre of Lecturer in government college cannot be said to be a back-door entry or an irregular appointment. Appointment is as per the qualification required and the government machinery was authorised to make such appointment in case of exigency. These petitioners are mainly relying on the order passed by the Division Bench of this Court in LPA No. 1057/99 and cognate appeals on dated 29.9.1999. These LPAs were filed against the verdict of the ld. Single Judge rejecting the various pleas including regularisation by the ad hoc Lecturers apprehending termination of their services.

5. The case of GPSC selected candidates praying for a writ of mandamus can be divided into two sub-groups, namely;

(i) candidates who have applied afresh for appointment and got selected;
(ii) candidates who are at present serving as Lecturers on ad hoc appointment in competition who have cleared GPSC selection procedure and got entitlement for being appointed on the post;

These groups of candidates have tried to submit before this Court that on their appointment, they should be treated appointed on the date on which they had entered the department so that they can avail their seniority. (Group of ad hoc Lecturers presently serving on the set of facts pleaded in their respective petitions) can be divided in following sub-groups:-

(i) ad hoc appointees who have cleared GPSC and got entitlement for appointment;

(ii) ad hoc Lecturers though entitled to appear before GPSC, but have not appeared or participated in competitive interview in response to the publication of advertisement published on 29.6.1998;

(iii) ad hoc Lecturers who have applied to GPSC in response to the advertisement published on 29.6.1998 but who are not called for interview as, according to GPSC, they were found over-age.

(iv) ad hoc Lecturers who were entitled to appear before GPSC, they had appeared, sca266401j

6. It is pertinent to note that sub-group (ii) of GPSC selected candidates and sub-group (i) of ad hoc Lecturers presently serving are of the same petitioner incumbents. Ad hoc Lecturers who are serving with the Education Department either as a Teacher or staff member such as Laboratory Assistant or Lab-Technician whose applications were invited and were appointed as Lecturers on ad hoc basis are forming one separate group which is brought to the notice of the Court during the course of oral submissions. These ad hoc Lecturers, according to the respondent State, are lien-holders and they can be absorbed and are to be absorbed on their termination, on their original post. Submission of ld. Advocate General Mr. Shelat qua this group of ad hoc Lecturers advanced before this Court is that the government has decided to send all these ad hoc Lecturers having lien back to their respective posts in Education Department and government wishes to appoint only GPSC selected candidates of Classes (i) serving as ad hoc Lecturers and selected by GPSC having no liens in Education Department, and (ii) candidates invited from open general markeet and passed through regular selection procedure who have been selected by GPSC. The endeavour of the State is to give advantage to the maximum and to minimize the number of jobless within the legal frame. Pending thse petitions, the stand of the respondent State of Gujarat has taken a sharp "U" turn. Considering the verdict of the Apex Court in number of decisions which I would like to refer and discuss later on, the arguments advanced by ld. counsel appearing for the parties give different shades of colour and this Court has been asked to exercise the discretionary jurisdiction in favour of the Lecturers who are serving and working as Lecturers on ad hoc basis. The arguments of ld. Sr. Counsel Mr. Harubhai Mehta and ld. Sr. Counsel Mr. Y.N. Oza needs to be referred

as both these Senior Counsel are representing two different set of ad hoc Lecturers. Mr. Mehta represents ad hoc Lecturers appointed from Teachers and employees serving in Education Department, who had requisite qualifications and eligibility for the post of Lecturer and serving as such since around 6 to 9 years. Mr. Oza has pleaded for the Lecturers who are appointed as per the policy of the government on local arrangement basis through the Directorate of Higher Education.

7. Special Civil Application No. 4102 of 2000 wherein Civil Application No. 10522 of 2001 has been preferred by the State of Gujarat, is treated as main special civil application in the group. As per order passed in Civil Applications preferred by the ad hoc Lecturers in Govt. Colleges of State of Gujarat on local selection/ selection by Education Department and who are (former) teachers or the persons serving in the Education Department are joined as respondents have appeared. Some such are petitioners and some are party respondents in the petition filed by the G.P.S.C. selectees. All such Lecturer/s are serving from different dates of their joining years and this period varies from 1987-88 to 1995-96. According to Mr. Mehta, for the reasons best known to the State of Gujarat and Gujarat Public Service Commission (hereinafter referred to as GPSC), there was no recruitment of college teachers by the Government through GPSC. These college teachers are granted lien. No procedure to recruit teachers through GPSC has started till 1998. For this period of 10 years of non-recruitment by the State through GPSC, many new contingency and facts situation have cropped up including the fresh norms as to the qualifications have been introduced. Some of such Lecturer/s appointed on ad hoc basis had approached this court by filing Spl.C.A. No. 841/98. Decision of this Court in aforesaid Spl. C.As. was challenged before the LPA Bench by filing LPA No. 1057/99 & Group. Observations made by the LPA Bench in the aforesaid group of matters, is one of the back-bone of the submissions of Ld. Counsel Mr. Mehta, wherein LPA Bench has observed that "in view of the statement made before us and the aforesaid facts, if the appellants of their association of which the appellants are members, file a representation within one week from today to the State Government, it is hereby directed that the State Government shall consider such representation within a span of two weeks, obviously without being influenced by the observations and directions contained in the impugned judgment and order in Spl. C.A. No. 841/98 or any other order of judgment on the subject identical to these appeals and will decide the merits of such representation

independently upon the strength of the fact representation." The LPA Bench permitted all the petitioners to withdraw Spl. Civil Applications and asked to make a representation in light of the above-referred observations. It is argued that withdrawal of Spl. Civil Applications by the ad hoc Lecturer/s was only because of the statement made by the State Government before the LPA Bench and the representation by the ad hoc Lecturer/s has been made within a stipulated period. According to Mr. Mehta, at one point of time, considering the totality of the facts and circumstances including the method of recruitment adopted by the Government while appointing the Lecturer/s on ad hoc basis, it was decided by the State Government that services of such Lecturer/s can be regularised. By that time, GPSC started recruitment procedure. Copy of the advertisement given by the GPSC and published in the news papers for the post of Lecturer/s is available on record. Qualifications for the appointment is prescribed for the post advertised and same were mentioned in the advertisement. The norms as to qualifications mentioned in the advertisement do not state that a candidate must have cleared any of the tests i.e. examinations conducted by the authority approved by the University Grants Commission (hereinafter referred to as UGC for short). According to Mr. Mehta, a person intending to get job as a College Teacher, must have cleared National Eligibility Test (hereinafter referred to as "NET") or State Level Eligibility Test (hereinafter referred to as "SLET"). This norm is one of the essential norm till December 1997 and there is no reference in the advertisement published by the GPSC on the requisition of the State Government for such requirement. Ad hoc Lecturer/s who were serving with the education department as Teacher or Laboratory Assistant, were experienced hand and having all qualifications prevalent at the time of their appointment as ad hoc Lecturer/s. Against the fresh candidate, it is collusive to have an experienced man in the field of education. Some of such ad hoc Lecturer/s are satisfying the norms to become Post Graduate Teacher (PG Teacher for short). Some of them are already taking lectures in PG Classes. If such ad hoc Lecturer/s are terminated or otherwise substituted by fresh recruits through GPSC, there may be shortage of PG Teachers and there may be vacuum in some subjects so far as PG Teachers are concerned. Fresh recruits cannot be assigned the work of teaching to PG students. It is specifically pointed out by Mr. Mehta that some such ad hoc Lecturer/s are not called in interview by GPSC considering the age factor and some of them have inocently not applied as they were not treated eligible

only on account of age factor, though they were appointed as Lecturer/s while in service. This has seriously prejudiced the case of ad hoc Lecturer/s who were teachers and were serving in the education department and have joined as Lecturer/s on ad hoc basis on the promotion granted by the Higher Education Department. One of the grievance expressed by Mr. Mehta is that merely beause GPSC had not started recruitment though statutorily authorised, future of the persons serving since years should not be asked to leave the cadre and to create vacancies for fresh recruits. Undisputedly, the persons appointed on ad hoc basis are otherwise qualified. By starting recruitment procedure afresh after several years, the future of the persons serving in the cadre whether can be blocked, is the question raised by Mr. Mehta. Recruitments normally are made against the available vacancies or there can be recruitment against future vacancies and for that waiting list can be prepared. By referring two different affidavits filed on behalf of the government, Mr. Mehta had pointed out that the Government, legally, cannot take such a "U" turn. If legitimacy to continue in the cadre of Lecturer/s has been accepted by the State in the first affidavit dated 14.6.201 of Mr. Vora, then it was easy for the State to make exception. State Government should have requested GPSC to regularise services of ad hoc Lecturer/s and ex-teachers, the principle of "legitimate expectation" would play an important role in the preent case. All these ad hoc Lecturer/s have otherwise qualified to be appointed as Lecturer/s, the scope to get themselves absorbed or appointed as Lecturer/s in private colleges or any college run by the local-self government, has been adversely affected. Mr. Mehta has submitted that Human Resources Development Programme has stopped people to exploit situation which is in favour of the individual. As these ad hoc Lecturer/s were permitted and asked to join cadre of Lecturer/s as they were qualified teacher in the Govt. Colleges, Schools and Institutions, they had joined the cadre and at present serving as Lecturer/s and had not cared to exploit favourable situation by joining private colleges i.e. colleges run by the public trust colleges. The tendency to continue ad hoc arrangement for long years while appointing Lecturer/s in colleges, has created right in favour of such ad hoc Lecturer/s and obligation on the State to see that their services are regularised. The statement made in affidavit dated 14.6.2001, is an admission by the State Government. It also tells about the policy accepted by the State Government. Stand taken by the State in the subsequent affidavit dated 2.8.2001 tells totally a new thing. When teachers were posted as Lecturer/s on ad hoc

basis, lien in the department was kept anticipating that in near future, there shall be a recruitment on the post of Lecturer/s by GPSC on State requisition and so such teachers either will be selected or regularised on such post or will be sent back to the original post of teacher in their respective schools. The repatriation which now the State Government intends to make of such ad hoc Lecturer/s, is likely to affect teachers and such Lecturers on many other counts, such as;

(i) they will be losing salary and shall have to serve with less amount of pay;
(ii) they have lost their right to become Supervisor or Principal in their respective school;
(iii) Work-load and working conditions in light of the advanced age etc;
(iv) reduction in social status because Lecturer/s in college is respected more in comparison to the Teacher in the school.

8. Some of the candidates who are to be recruited being declared selected by the GPSC, students of such ad hoc Lecturers and government as per the second affidavit intends to replace experienced teachers vice fresh recruits and the same would create an impression in some cases that a seasoned Lecturer was not even able to compete his ex-student in the test conducted by GPSC for recruitment. Mr. Mehta has also submitted that as per the settled legal position, one ad hoc servant cannot be replaced by another ad hoc servant. None of the candidates who are now declared selected, can be said to be regular appointee as none of the qualifications as to clearance of NET or SET was prescribed while calling candidates from open market. Their replacement, technically, would be of ad hoc type because if such candidate is not able to clear either NET or SLET, then such a candidate cannot be continued on the post of Lecturer. So, technically GPSC and State Government indirectly intends to replace another set of ad hoc selectees. According to Mr. Mehta, this is not legally permissible. This Court can legitimately say and declare that the selection of candidates by GPSC on the strength of advertisement published in the year 1998 is bad for administrative reasons and GPSC, in view of accepted norms of UGC, no candidate can be selected or appointed who has not cleared either NET or SLET. Such selection would not confer the right to appointment and so the policy decision taken by the State Government reflected in 2nd affidavit filed in the month of Augst,2001 would

not validate irregular selection. Mr. Mehta has placed reliance on the observations made by the Apex Court in the case of Sabita Prasad v/s State of Bihar, reported in 1992(3) Scale 361. Mr. Mehta has referred relevant part of the decision and especially para-16 of the judgment. Such an appointment, according to Mr. Mehta, comes latter. Words "administrative reasons" reflected in the judgment may be regular addition. Even candidates who are declared selected and eligible to be appointed as Lecturer/s, cannot be regularised as the clearance of NET or SLET examination is a condition precedent. Recruiting agency or the Institution intending to appoint Lecturer/s in a college affiliated to the University, is bound to respect the provisions of UGC Act, 1952 and regulations framed thereunder. By quoting Sections 12(d), 12(j) and 26(i)(e) of the Act, Mr. Mehta has submitted that the State Government and GPSC have tried to recruit persons ignoring these provisions and they intend to substitute the persons who are not otherwise eligible to be appointed as Lecturer.

9. Mr. Mehta has placed reliance in the decision in the case of Bhagalpar University v/s State of Bihar, reported in 1994 Lab.I.C. 2343. By quoting paras 25 to 27, 32, 34 and 36 of the decision, it is submitted that instead of replacing the ad hoc Lecturers vice ad hoc Lecturers, State Government ought to have implemented the first policy decision. It was also open for the State Government to inform GPSC that as the advertisement published is not in accordance with regulation dated 27.10.1997, the selection being not regular, selected candidates cannot be appointed till they clear NET or SLET examination. Mr. Mehta has placed reliance on the decision in the case of Osmania University Teachers Association v/s State of Andhra Pradesh and Another, reported in AIR 1987 SC 2034 . Placing reliance on the decision in the case of State of Haryana v/s Piara Singh, reported, in AIR 1992 SC 2130, Mr. Mehta has submitted that the ratio of this decision helps the ad hoc Lecturers and, therefore, only because of this and other set of facts, ld. GP appearing before the LPA Bench had made a positive statement and ad hoc teachers were asked to make representation.

10. It is also submitted that cast iron law is not there that one cannot be regularised on the post where recruitment is to be made through GPSC. Existence of GPSC in the State and its role is of constitutional functionary. However, there can be regularisation of a person working on such post and against available vacancy. Placing reliance on the decision in the case of

All Manipur Regular Posts Vacancies Substitute Teachers' Association v/s State of Manipur, reported in 1991 Suppli.(2) SCC 643, it is submitted that the totality of facts can give rise to the jurisdiction of this Court vested in Article 226. This Court can give direction to consider the absorption of the persons who are working on the post of ad hoc basis. In the case of Karnataka State Private Stop-Gap Lecturers Association v/s State of Karnataka & Others, reported in 1992 (2) SCC 29, it has been observed that there cannot be any back-door entry (P.35), but in view of the ratio in the case of Piara Singh (supra) (Para 25), the appointments of ad hoc Lecturers who were teachers in Education Department itself, cannot be said to be back door entry. Their qualification and need of the State Government to have Lecturers in Govt. Colleges and their experience as teacher in schools or higher secondary school has created some contingency and, therefore, alternative device by the State machinery was worked out. In reference to Article 32 - 141 of the Constitution of India, only back-door entry cannot be made and permitted, but it is always open for the Government to exercise residuary powers to appoint a person on such post. These powers are general executive powers of the State Government. As there was no regular recruitment for college teachers in State of Gujarat since 1988, the Government has recruited, to satisfy the requirement and need in reference to various colleges situated in different parts of the State, Lecturers from Education Department as teacher or Lab Assistant as also from amongst the candidates after publishing advertisement or by inviting names from the Employment Exchange, were appointed in accordance with government resolution passed in this regard. Quoting Rule 16(D) of the Gujarat Civil Services Classification & Recruitment (General) Rules, 1967 (hereinafter referred to Rules of 1967), it is submitted that selection of ad hoc Lecturer is made in exercise of said powers. Committee who had interviewed candidates even for such selection, was having representative from the Directorate of Higher Education, Subject Expert, Head of the Department and college Principal. Rules under which this method was evolved are also rules framed under Article 309 of Constitution of India. When one of the writ petition was argued before this Court, the aforesaid Rule 16(B) was pointed out. Placing reliance on the observations made by this Court in the case of D.D. Upadhyaya & Ors. v/s State of Gujarat & Ors., reported in 1998(3) Vol. XXXIX (3) GLR 2264 and especially on para-9 of the judgment, it is submitted that if UGC Regulations are accepted, then the appointment of ad hoc Lecturers has a scope of regularisation. These ad hoc

Lecturers are granted pay-scale of Malhotra Commission. Colleges affiliated to respective Universities have also got the usual approval from the respective Universities. Terms and conditions of Appendix-I Col.A if considered, is important and this Court should hold that the present selection is also ad hoc selection. Qualification prescribed for clearance of PSC Examination is considered in light of UGC Regulation, wholesale dislodging of ad hoc Lecturers would not be justified and this Court should direct the State Government to get the services of ad hoc Lecturers regularised pointing out to GPSC that their recruitment is not a back door entry. It also can be pointed out by the government to GPSC that recruitment of present ad hoc Lecturers is in accordance with the rules framed under Article 309 of the Constitution, by pointing out Rule 16(B) of the Rules of 1967. So where appointment is made on relaxation of rules, then it should be tested in reference to the scheme provided under Rule 16 of the Rules of 1967. So, in the cases where the Apex Court has considered the recruitment by way of back door entry, cannot be equated with the present case. So far as the age of ad hoc Lecturers presently working is concerned, it was open for the State and GPSC both to relax the age limit and other concessions also could have been offered. According to Mr. Mehta, the government has, on political consideration, has taken a sharp "U" turn and adopted contrary stand then the stand taken by it before the Division Bench at the time of making statement through AGP and by filing affidavit in the month of June in the present proceedings.

11. The alternate argument of Mr. Mehta is that the cases of ad hoc Lecturers are never sent to GPSC for regularisation. It was possibly for the Higher Education Department to send the details of educational qualification, experience, eligibility of a particular ad hoc appointee- Lecturers as to his qualification and eligibility to become PG Teacher and other relevant record including experience as examiner in university examinations or as paper-settor in university examinations etc. and that till that procedure is not followed and recommendations are not considered, requisition to recruit fresh candidates as Lecturers in very large number i.e. more than 400, ought not to have been even made. This Court even today, can issue directions to the Government that the candidates who are selected by GPSC, meanwhile can be treated as if on waiting list. All such candidates can be intimated that it is obligatory on their part to clear any of the two tests i.e. NET or SLET. Without prejudice to the

submissions made by Mr. Mehta and admitting anything adverse or contrary to the submissions made, the last submission of Mr. Mehta is that if this Court holds that GPSC selected candidates shall have to be preferred against the ad hoc Lecturers presently working in the government colleges, then government should be directed to apply principle of "last come first go" subjectwise treating all ad hoc Lecturers in the same cadre without making any differentiation amongst them or by assuming these ad hoc Lecturers to be of two different classes, i.e. (i) recruitees from government colleges and Education Department who were offered lien on their respective posts; and (ii) candidates selected and appointed as ad hoc Lecturers through local recruitment procedure. It is submitted that ad hoc appointees should be treated as one class and gesture to offer lien at the time of recruitment should not become embargo in considering their case for regularisation on the remaining vacant posts or future posts which had fallen vacant after publication of the advertisement by GPSC in the year 1998.

12. Ld. Senior Counsel Mr. Y.N.Oza has adopted most of the arguments advanced by ld. Senior Counsel Mr. Mehta and has further submitted that the government has recruited ad hoc Lecturers from the persons working in the Education Department and from open general category. The persons from both these categories were to face selection, but who were in Education Department, were not to appear before the Selection Committee because they were considered as staff persons. So, if some of the ad hoc Lecturers have to go back against the recruitment of GPSC selectees, then staff persons should be sent back on the post on which they are having lien and candidates from open general category should be preferred and their services can be regularised by getting approval from GPSC. Candidates selected by local selection committee are not from the recommended class of persons. Their selection has been approved by the Director of Higher Education. Criteria for selection is same and as per statutory Rules and norms prescribed. On same conditions which are reflected in the advertisement published in GPSC, the candidates are selected and working since years. Selection Committee for the post of Lecturer on ad hoc basis is constituted of three persons including (i) Secretary, (ii) Subject Expert, preferably Head of the department, and (iii) Principal of the College. Selection Committee of the State Government is constituted of five persons, viz. (i) Joint Director or Higher Education, (ii) Head of Department, (iii) & (iv) Subject Experts, and (v) Principal of the College. The

government is otherwise supposed to send requisition for recruitment, but the government had adopted procedure provided under Rule 16 of the Rules of 1967. Ban on recruitment imposed by the government is not accepted. There was no ban for ten years. Selectees were under an impression that they would be given offer to appear before GPSC at the earliest through college or against advertisement, otherwise it was reasonable expectation of the candidates that their services will be regularised by GPSC. In the year 1998 for the first time after 10 years, the State government made requisition. After ten years, it would not be justified for the State Government to take a stand that recruitment of ad hoc Lecturers from open general category was a stop gap arrangement. Policy as to reservation has also been observed strictly. By referring the interpretation of phrase " ad hoc" in number of decisions, ld. Senior Counsel Mr.Oza has submitted that in the present case, there was no real element of ad hoc nature and totality of facts indicates that basic element of adhocism is missing. There should not be mathematical exercise of "last come first go" principle and a class as a whole should not be in one compartment which may create confusion. As alternative service is available and open, department persons should be asked to leave first. While referring to the decision of this Court (Coram: M.R. Calla,J) while dealing with Spl.Civil Application No 2843/1991 (Group) decided on 9.3.2001, Mr. Oza has submitted that it should not be accepted as ratio or the correct logic in view of the subsequent statement made before the Division Bench and the affidavit filed by the State Government in all the Special Civil Applications. According to Mr.Oza, representation made by ad hoc Lecturers is not considered and no State decision is placed on record nor these candidates are intimated about the decision taken by the State individually. Mr. Oza has pointed out that most of the candidates have become over-aged. They have no scope to get alternate government job in any cadre. Some of them have married and settled in their life. So, element of equity cannot be ignored. Stand taken by the government after several years suffers from infirmity of delay and latches even if right of GPSC selectees is made out. It is submitted by Mr. Oza that if the persons serving as Lecturers since 8 to 10 years are asked to leave, then because of health and mental state on account of track-change, in such circumstances when such candidates appear before the selection committee of GPSC, correct method of evaluating candidate appearing in the examination of GPSC may give rise to the possibility of failure and, therefore, this Court, in view of the decision in the case of Jatinder Kumar & Others v/s State

of Punjab & Others, reported in AIR 1984 SC 1850, advise the government, may be in the form of mandate or a direction, to consider the facts of each individual for their regularisation to the post of a Lecturer. No mandamus should be issued to the State Government in the present situation to replace ad hoc Lecturers vice GPSC selectees. Decision in the case of All Manipur Regular Posts Vacancies Substitute Teachers Association (Supra), (para-2) is relevant and observations made by the Apex Court in the said decision should be considered. In exercise of powers vested under Article 226 of the Constitution, this Court can issue similar directions. Referring to the decision in the case of Narender Chadha and Others v/s Union of India & Others, reported in AIR 1986 SC 639, it is submitted that the say of the ad hoc Lecturers should not be considered on the strength of bargaining power or on the aforesaid criteria and offered opportunity to appear and till then they may continue. The Apex Court had considered 5 years criteria. According to Mr. Oza, names of GPSC selectees should be treated as candidates on waiting list. In the alternative, it is submitted that GPSC selectees are to be preferred, then department persons who have not faced Interview Committee, should be sent back and the persons who are to be relieved for non-availability of the post, should be treated as surplus, as referred by the State Government in the affidavit filed before this Court in the present petition.

13. The submissions of Senior Advocate Mr. I.J. Naik are mostly academic. He has taken me through the concept of word "ad hoc" and concept of "substitution vice ad hoc" by referring to the decision where candidates were substituted vice ad hoc appointees. Referring to para-46 of the decision in the case of State of Haryana v/s Piara Singh & Others, reported in (1992)4 SCC 118, Mr. Naik has submitted that considering the fairly long spell of service of ad hoc Lecturers, their case for regularisation can be considered and ought to have been considered in light of the reservation policy. Referring to the principle of "promissory estoppel", it is submitted that there is a scope to regularise 17 Lecturers in the subject English, 14 in the subject Gujarati, 13 in the subject Hindi and 12 in the subject Sanskrit. In the case of Vinod Shankar Tripathi, reported in (1998)8 SCC 583, the Court has considered all relevant aspects and has accepted that crossing of age limit is a factor relevant for considering a candidate in reference to regular appointment who is working on ad hoc basis. Some ad hoc Lecturers are not called for interview and this action of GPSC is again under bad

advise. No interview could have been taken by GPSC unless persons working on ad hoc basis are offered an opportunity. Placing reliance on the decision in the case of Jacob M. Puthuparambil & Ors. v/s Kerala Water Authority, reported in (1991) SCC (L&S) P.25, by way of alternative argument, Mr. Naik has submitted that the government should be asked to regularise services of ad hoc Lecturers when qualification criterias are satisfied. In reference to Articles 14 & 16(1) of Constitution of India, it is submitted that there must be equity before the law. When University has approved the appointment and some of them are made PG Teachers, then their termination of service cannot be said to be in accordance with equity and good conscience. Placing reliance in the case of J.J. Muralidhara Rao v/s The State of Andhra Pradesh and Ors., reported in 1971(1) SLR 523, it is submitted that subsequent change if puts a candidate under disqualification then such a change should be ignored. e.g. so far as subject of Computer Science is concerned, there is substantial change. Crossing of age limit is not a matter of disqualification when candidates are already in service. Relaxation in age can be offered and should have been offered. For this purpose, Mr. Naik has placed reliance in the decision in the case of Dr. Surinder Singh Jamwal and another v/s State of Jammu & Kashmir, reported in AIR 1996 SC 2775 = 1996(9) SCC 619 and decision in the case of Inspector General of Registration U.P. & Another v/s Avdeshkumar & Others, reported in 1996 SCC (L&S) 1222. Extension of age can be made up to 45 years. Ad hoc appointments can be approved by GPSC or UPSC. Office Memorandum, method of selection of such candidates and general rule of recruitment can be looked into for such purpose. Placing reliance on the decision in the case of Ms. Pooja Sood v/s D.A.V. College Managing Committee, Hoshiarpur & Ors., reported in 1992(4) SLR 222 (Punjab & Haryana High Court) and in the case of Dr. (Mrs. Meera Massey, reported in 1998(2) All India Services Law Journal, Page 178, it is submitted that ratio of these decisions tilt the balance in favour of the ad hoc Lecturers. This Court can treat the case of ad hoc Lecturer as mercy petition when their stand is for regularisation of service when normally the State Government should send requisition within two years if State intends to recruit persons on the vacant post. Delay caused by the government would not help the government in such case. It is submitted that the State Government and GPSC cannot take advantage of their own wrong by putting ad hoc Lecturers into adverse and awkward situation. It is settled that when one thing is to be done as per the Statute or in the manner provided by the Rules & Regulations, then it should be done in

that manner only and not in any other manner. While appointing ad hoc Lecturers, the government was very well aware about the statutory obligation to make appointments through GPSC and GPSC could have done this exercise only on the receipt of requisition by the State Government. Ad hoc appointee had a reason to believe that now the Government has evolved some parallel formula as per the scheme provided under Rules of 1967 framed under Article 309 of the Constitution. So, existing ad hoc Lecturers cannot be equated with back-door entry in the government job out of turn and in absence of proper advertisement of recruitment.

14. Mr. Vora, ld. Counsel while representing the case of the petitioners of Spl.CA No. 8943/2001 (etc), has submitted that some of the ad hoc Lecturers are serving for more than 14-15 years. Some of such professors had applied in response to the advertisement published by GPSC and have been declared successful. Letter written by the government regarding relaxation of age for Lecturers who are serving on ad hoc basis is considered by the GPSC. Even than, in view of specific condition in the advertisement, ad hoc Lecturers who have not applied for the post or who are not called for interview, are affected adversely. The persons who were working with the Education Department in the capacity of non-teaching staff member have been selected, but other ad hoc Lecturers are not offered any protection in the 2nd affidavit filed by the State Government and their return to the parent department as non-teaching staff member, would be degradation and they will also not get the protection of pay etc. They have lost all chance of promotions in the department and other advantages, though they are educationally qualified to get appointment as Lecturers in any government or semi-government teaching institute as per the norms prescribed by UGC. In the present case, no appropriate steps are taken by the State of Gujarat to get the services regularised of the persons who are ad hoc appointees. By pointing out policy decision taken by the government in the year 1999, in the case of professors and lecturers serving in the colleges of Ayurvedic Medicines, Mr. Vora has submitted that it would not be proper or justified for the State of Gujarat to say that it cannot get regularisation of ad hoc LL and is bound to make recruitment of such Lecturers through GPSC only. The case of each ad hoc Lecturers could have been sent to GPSC for regularisation. Mr. Vora has otherwise adopted arguments advanced by ld. Senior Counsel Mr. Harubhai Mehta and has submitted that in case this Court is of the view that no priority can be given to ad hoc appointees against GPSC selectees, then

the ad hoc Lecturers presently working should be treated as a class and there should not be any bifurcation amongst such ad hoc appointees i.e. ad hoc appointees appointed from open general category and ad hoc appointees appointed from amongst the persons serving in the Education Department as teachers and thirdly ad hoc appointees appointed from staff members serving in the Education Department such as Librarian, Laboratory Assistant etc. and while passing the order, the principle of "last cum first go" should be applied and lien theory put forward by the government in the second affidavit should be held as theory worth not acceptable. According to Mr. Vora, ad hoc Lecturers serving for more than 10 years, had crossed the age limit on the date of advertisement. So, they could not apply for the posts advertised. Even than Lecturers who had applied irrespective of they being over aged, two of them have passed, one is declared failed and one though had applied, had not appeared apprehending that his case would not be considered as he being over aged. The policy decision of the government relaxing the age has created confused situation. If the finding recorded is against the ad hoc appointees, then policy of relaxing age adopted by the State would positively tilt the balance in favour of the Lecturers who have been appointed earlier in point of time. The grievance of Mr. Vora is that in the reply affidavit filed by the State, there is no formal reply to one of the main contentions raised by the ad hoc appointees where they had submitted that "last cum first go" principle should be made applicable. The policy decision taken by State of Gujarat in the year 1990 (Annex.D in Spl.C.A. No. 8943/2001) is the second policy decision. First decision was taken in the year 1969. As per record, on 7.1.1999, it was decided to regularise the services of ad hoc appointees. In the gazetted cadre of services, Engineers, Lecturers in Ayurvedic Colleges are regularised in the State of Gujarat, cannot adopt different standard in similarly situated contingency. Principle of "fair play" cannot be ignored by the State and in support of his submission, Mr. Vora has drawn attention of the Court on page no.39 (Annex.C produced in SCA No. 8943/2001). All formalities before appointing ad hoc Lecturers were taken care of by the State. SC & ST Quota, OBC quota is also considered. Page-43- "No objection certificate" is the relevant document for this purpose. It is submitted that 33 candidates are not permitted to appear. So on one hand, GPSC has selected candidates who were over-aged and 33 of them are not permitted to appear. While regularising the services of Medical Officers appointed on ad hoc basis, date of

appointment has been considered by the State and not for the purpose, age factor of respective candidate was not considered. In more than one decisions, this Court has held that if a person who is serving for pretty long period, is quasi-permanent and cannot be terminated or removed without offering an opportunity of being heard. All ad hoc Lecturers fall under that category and especially those who have put in services of more than five years. While dealing with SCA No. 2070/92, Hon'ble Mr. Justice S.D. Shah has directed to regularise the services of the government servants who had put on service of the period of more than seven years. Placing reliance on the decision in the case of B.J.Shelat v/s State of Gujarat & Anr., reported in 15 GLT 115, Mr. Vora has submitted that considering the age and experience, repatriation to the lower cadre would not be justified. If they are repatriated to the lower cadre, though they have gained rich experience and have better qualifications after putting in long service, even would not make them entitled to claim senior scale because as per the policy laid down by various government resolutions, such senior scale cannot be granted to such candidates repatriated to the lower cadre. University has accepted ad hoc LECTURERS and formal approval has been granted. So, non-regularisation of services of ad hoc appointees ignoring the commitment made in the first affidavit by the State, is not justified. Referring to the decision in the case of E.P. Royappa v/s State of Tamil Nadu & another, reported in AIR 1974 555, Mr. Vora has submitted that ratio of this decision would help the ad hoc appointees.

15. Mr. G.M.Joshi appearing for the petitioners of Spl.CA No. 3807/2001 has submitted that all the petitioners are ad hoc appointees who have been offered lecturership while they were in service with Education Department in the capacity of non-teaching staff members and teachers. The concept of lien, according to Mr. Joshi, has become irrelevant because of period of service which they had rendered as Lecturers. Firstly, Mr. Joshi has submitted that services of all the ten petitioners should have been regularised by the government. Appropriate proposal quoting earlier experience in the Education Department and their performance in service should have been brought to the notice of the GPSC and the State Government ought not to have made requisition to the number of posts on which such teachers and staff members are serving as ad hoc Lecturers and no formal advertisement for recruitment to the post equal to such ad hoc appointees should have been published. Firstly, the State Government ought to have

tried for regularisation and after getting formal refusal to regularise posts of such ad hoc appointees only, the exercise for recruitment should have been undertaken. The second submission of Mr. Joshi is that if the finding of this Court is against the ad hoc appointees and in favour of the GPSC selectees, than this court should direct the State Government to adopt the principle of "last cum first go" as argued by Mr. Vora and Sr. counsel Mr. Mehta.

16. Mr. D.N. Patel appearing for GPSC has pointed out the rules for appointment and it is submitted that for direct recruits, maximum age limit is 30 years. So, on receipt of requisition for recruitment of college teachers, advertisement was published by GPSC immediately after initiation of recruitment procedure. Advertisement published is a call as per norms. On completion of selection procedure, list of selected candidates is sent. When the procedure for selection is over and list of selectees is sent to the government, then the government is supposed to appoint these candidates. It is submitted by Mr. Patel that GPSC, being constitutional functionary, is authorised to ask the government to make appointment as per selection made by the selection committee of GPSC. The length of service of ad hoc appointee is not relevant. After referring to the appointment order of such ad hoc appointees, Mr. Patel has pointed out that all ad hoc Lecturers were aware about the fact that they are Lecturers and have to serve as such till candidates selected by GPSC are available for being appointed on the very post on which they are appointed. By referring to paras 6 & 7 of the decision reported in the case of Dr. Arundhati Ajit Pargaonkar v/s State of Maharashtra & Anr., reported in JT 1994 (5) SC 378, he has submitted that the candidate who has served for 9 years on the post on ad hoc basis with no break in service, has not been preferred against the candidates selected by the GPSC. After referring to the case of Piara Singh (supra), the Apex Court in the case of J & K Public Service Commission etc. v/s Dr. Narinder Mohan and Others, reported in AIR 1994 SC 1808, has held that "recruitment has to be made through selection by PSC and there is no scope to regularise services of ad hoc Lecturers by making relaxation. Requirements for the post cannot be relaxed by Executive in exercise of its general powers and, therefore, ad hoc appointment cannot be treated as made under Rules. It is further submitted that this Court should consider the ratio of the decision in the case of State of Orissa and another v/s Dr.Pyari Mohan Mishra, reported in AIR 1995 SC 974, the Apex Court has held therein that continuous

officiation on a particular post on ad hoc basis would not give rise to claim a permanent status. Permanent or substantive status is a thing different than the ad hoc status. Placing reliance on the decision in the case of Dr. Kashinath Nagayya Ibatte v/s State of Maharashtra & Ors., reported in 1995 Suppli.(3) SCC 363, Mr. Patel has submitted that in that case ad hoc appointee has put in long period of service over 12 years, even than the candidate selected by PSC being available, ad hoc appointee was not allowed to continue on such post at the discretion of the government. So, according to Mr. Patel, ad hoc appointee can continue on such post till GPSC selected candidate is available and if anybody is asked to continue, then such continuation also should be construed as subject to selection by GPSC. State Government cannot regularise the services of ad hoc appointees. It is further submitted by Mr. Patel that in the case of Dr. Surinder Singh Jamwal and another v/s State of J & K and others, reported in AIR 1996 SC 2775, it is held that ad hoc appointment if made dehors the service rules, the claim by ad hoc employee having put in more than 13 years of service, would not give him right for regularisation. Such a candidate can continue only till regularly selected candidate is appointed. If such ad hoc appointees have become age barred on the relevant date of recruitment, then State Government can be directed to relax the necessary age qualification. In the present case, no formal direction as to relaxation of age was received by the GPSC before the date on which posts were advertised. So, nothing wrong has been committed by GPSC. Replying the submissions made by ld. Senior Counsel Mr. Mehta and Mr. Y.N.Oza as to mode of appointment adopted by the State of Gujarat and especially by Higher Education Department while submitting that the present ad hoc Lecturers cannot be said to have been appointed in the manner which can be termed as "back-door entry", Mr. Patel has submitted that ad hoc appointees who have not been appointed by passing through the process of recruitment through open competition to be held by GPSC, is not permissible and, therefore, regularisation of such ad hoc appointees is obviously not permissible. Referring to Article 320 of the Constitution of India, he has placed reliance on the decision in the case of P. Ravindran & Others v/s Union Territory of Pondicherry and others, reported in 1997(1) SCC 350. It is further submitted by Mr. Patel that in case of Ram Ganesh Tripathi & Ors. v/s State of U.P.& Ors., reported in (1997)1 SCC 621, the Apex Court has held that in order to accommodate those direct recruits, the government may really require to terminate of as many ad hoc appointees and instead of doing so, with a view to

favour such ad hoc appointees, the government promoted them to the higher post on ad hoc basis. Apex Court has examined the rule of malafide in service jurisprudence and effect of regularising the services of ad hoc employees not selected by GPSC with retrospective effect from the date prior to the date of appointment of regular GPSC selected candidates. According to Mr. Patel, ratio of this decision would help the case of the GPSC selectees and not the Lecturers working at present on ad hoc basis. By reading the order of appointment, Mr. Patel has stated that appointment of the Lecturers is on ad hoc basis. He had drawn attention of the Court to the phraseology used by the appointing authority and has pointed out that each such appointment is subject to availability or on arrival of GPSC candidate. By passage of time, more number of posts became vacant and, therefore, it offered an opportunity for such ad hoc appointees to work for longer period. Ad hoc Lecturers now cannot submit that this Court should treat this important condition as deleted from their appointment orders. They are bound to be replaced by regularly selected candidates by GPSC. Mr. Patel has pointed out that at the instance of GPSC and with a view to satisfy and fulfil the legal obligation, the State Government seems to have filed second affidavit realising that unless GPSC regularises the services of such employees, State itself cannot regularise the services of such ad hoc appointees.

17. Ld. Advocate General Mr. S.N. Shelat representing the State, has taken me through relevant rules framed in the year 1980 under Article 309 of the Constitution of India. The State Government is bound to appoint Lecturers in consultation with GPSC. Exemption from such consultation is positively there, but rules provide that such a privilege can be claimed by the State in the cases where appointment is for less than one year. There is improvement in educational qualification when requisition was made in the year 1998. So, a person who is already in service on ad hoc basis and discharging duties as Lecturers, may be efficiently and satisfactorily, would not be entitled to apply for the post advertised wherein there is improvement in educational qualification for the very same post. Reading certain relevant part of the advertisement dated 15.6.1998, he has submitted that for 34 subjects, there were 435 vacancies and in that reference, there was litigation in this Court and writ petition was filed by some of the ad hoc appointees. While dealing with said writ petition viz. Spl.C.A. No. 2273/90 (group), this Court has held in the oral judgment dated 12.5.1999

that:-

"3. So, the interest of justice will be served if these special civil applications are disposed of in terms that the interim relief, which has been granted by this Court in these matters shall continue till the GPSC finalises the selection of the candidates and on the reccommendations thereof, the appointments are made. However, it is made clear that in case any of the petitioner had not applied or whre the petitioner, who applied and failed in the selection, they may not have any right to continue on the post from the date on which the GPSC publishes the select list. They have themselves to quit the post. Otherwise in all the eventuality on the availability of the selected candidates the petitioner has no right to continue on the post and immediately on joining of the selected candidates the respective petitioner should have to relinquish the post. Neither relieving order or termination order is necessary for the same. The GPSC is directed to complete this slection for the post of Lecturers in different subjects in government colleges in State of Gujarat within a period of six months from the date of receipt of the writ of this order.

4. The next question does fall for consideration that in future the State of Gujarat, its functionaries and officers are to be permitted to make the ad hoc appointment or not. Ad hoc and temporary appointments give rise to manifold litigations as well as it gives out a sense of instability in service, which results in frustration and dissatisfaction amongst the appointees and as a result of which it will certainly affect the teaching programme. Stability in the service is most important thing and it results in a proper discipline, confidence, sense of duty as well as enthusiasm and above all interest in the services. There are the matters of the appointments of the teachers and not ordinary services. Unless the services of the teachers are secured they will not be able to deliver goods i.e. proper teaching programme to the students. Apart from this, it results in manifold litigation before this Court, which unnecessarily increases the Court's work. These are all avoidable

litigations. But for the ad hoc appointments there would have been a reason or occassion for these petitioners to come up before this Court by filing these writ petitions. The time has come where the court has to take appropriate steps and measures to see that the State of Gujarat, its functionaries and officers work within the frame work of Constitution as well as to see that because of their inaction or ommission unnecessary and avoidable litigations may not come before this Court. The Court's precious and valuable time is utilised for doing real cases and not for the cases, which are nothing but created by the State of Gujarat, its functionaries and officers as a result of acting contrary to the provisions of the Constitution of India in making ad hoc and temporary appointments. Otherwise also the time comes where not to permit the respondents to make and continue the ad hoc appointments for years together and then protect those appointments till the regular appointments are made. At the very inception, there must be check of this Court or monitoring on the ad hoc appointments which are to be made by the respondents. The State of Gujarat through the Secretary of the Education Department is restrained from making appointment either on ad hoc or temporary basis or for a fixed term without first taking prior permission of this Court. All the appointments are to be made on the post of Lecturers only by selection through GPSC. "

18. The copy of the above-cited decision of this Court in Spl.C.A. No. 2273/1990 (group matters) is available on record of Spl.C.A. No. 5154/2000. LPA decided on 29.9.1999 (Coram: J.N. Bhatt & H.K.Rathod,JJ) has not created a right of regularisation in favour of ad hoc appointees nor the said decision has casted any obligation on the State to regularise services of the ad hoc appointees. According to ld. Advocate General Mr. Shelat, this Court had directed the respondent State of Gujarat by passing interim order on 4.5.2001 while dealing with Spl.C.A. No. 2395/2001 to clarify the stand of the State of Gujarat. Referring to paras 6 & 7 of the interim order, Mr. Shelat has tried to clarify the reasons of filing affidavit on 14.6.2001 in compliance with the directions of the order dated 4.5.2001. The said affidavit is on page 51 of Spl.C.A. No. 2395/2001. In Spl.C.A. No. 2843/1991, in the

judgment dated 9.3.2001, this Court (Coram: M.R. Calla,J) has positively clarified the legal contingencies in such matter and Mr. Shelat has placed reliance on relevant para-12 of the judgment wherein this Court has said :-

"12. It has been brought to the notice of this Court by the learned counsel for both the sides that on this type of grievance number of petitions had been filed, some of which have been decided and some have remained pending and certain matters i.e. Spl.C.A. Nos. 841, 935, 969, 1006, 1246, 1247, 1293, 1477, 1478, 1479, 1981, 2688 of 1998 with Spl.C.A. 2273, 3054, 3165, 3310 of 1990 with Spl.C.A. No. 2817 of 1991 and Spl.C.A. Nos. 1168, 1169 of 1995 decided on 12.5.99 by a common judgment and order and it has been orally stated by Mr. P.V.Hathi that after this judgment about 467 posts of Lecturers in different subjects were advertised through G.P.S.C. and even on that basis no appointments have been made so far. Learned AGP submits that she does not know anything as to wehat has happened in this regard and she has virtually pleaded no instructions."

19. It is submitted that this judgment is last in the field and in the case of ad hoc Lecturers appointed in government colleges. The decision reflected in the first affidavit dated 14.6.2001 was an arbitrary decision and, therefore, subsequent i.e. last affidavit, according to ld. Advocate General Mr. Shelat, is therefore relevant. Analysing the term " ad hoc", it is submitted that the very term indicates that appointment or arrangement is temporary and appointee has no right of substantive post. Rules for recruitment clearly indicate that substantive appointment can be made only through GPSC. On realisation of the correct situation, requisition to start recruitment procedure was sent to GPSC and now it has become obligatory and legal duty to accept the recommendations made by GPSC. If anybody is to be appointed for a period of more than one year, than such appointment should be in consultation with GPSC which is a statutory requirement. Undisputedly, none of the ad hoc appointees has been appointed in consultation with or on the approval of GPSC. Neither relaxation nor regularisation is provided in the recruitment rules. Merely because appointment is against the sanctioned post, the appointment itself would not become a regular appointment or appointment on substantive post.

Government is only competent to direct creation of posts and make arrangement for expenditure. Referring to Article 142 of the Constitution, Mr. Shelat has submitted that this Court, while exercising jurisdiction vested in it vide Article 226 of the Constitution, cannot direct the government to create post or to make arrangement for expenditure for Lecturers who are at present working on ad hoc basis irrespective of the appointment of GPSC selectees. All these petitions, according Mr. Shelat, are mainly governed by four different judgments; namely :-

(i) In Spl.C.A. No. 2273/1990 (Group) (Coram : S.K. Keshote,J) dated; 12.5.1999;
(ii) LPA No. 1057/1999 (group) (Coram: J.N. Bhatt & H.K.Rathod,JJ) dated 29.9.1999,
(iii) Spl.C.A. No. 2843/1991 (Group) (Coram: M.R. Calla,J) dated 9.3.2001, and
(iv) LPA 344/2000 in SCA 3308/1990 dated 11.6.2001 (Coram : M.R.Calla & N.G. Nandi, JJ)

20. It is submitted that the petitioners wish to see that ratio emerging from the abovesaid decisions needs to be reviewed in the context in which ad hoc appointees had put forward their case. There is no element of promise by the State, even if first affidavit dated 14.6.2001 is appreciated conservatively. The government was not estopped in filing second affidavit as the stand taken by the State in the second affidavit is in accordance with law laid down by this Court as well as by the Apex Court in number of decisions. Endeavour of the State should be and it is to see that nobody is rendered jobless. Even if somebody is to be rendered jobless, then figure of such person should be reduced to the least and, therefore only, the government has decided to send all ad hoc Lecturers who were earlier Teachers or staff members in the Education Department, of course, who have not been declared successful and selected by GPSC, to parent department. According to the figures available to the State, total 425 posts were advertised in different subjects and recommendations for appointment is received for 335 candidates in different subjects. Out of 335 candidates recommended, 77 are the candidates who are at present serving on ad hoc basis. 12 of such ad hoc Lecturers are from class who were on the date of appointment serving as either Teacher or member of non-teaching staff. Total 411 Lecturers at present are serving as Lecturers who have been appointed on ad hoc basis. Out of this figure, 341 are from open general

category and 70 are selected with a privilege of lien as they were serving in the Education Department. As per the last affidavit, 122 ad hoc LL can be accommodated till next man comes or in other words, GPSC is consulted or GPSC selected candidate is available. Mr. Shelat has clarified that State is not interested in replacing any ad hoc Lecturers by other ad hoc appointee. He has also submitted that repatriated ad hoc Lecturers can be assured for their seniority though their names are not reflected in the last seniority list prepared by the State. The government is ready to refix the seniority suo motu and this Court may also give appropriate direction and State will readily implement such direction. They can be made entitled to all other benefits which they would have got in their regular service as teachers or non-teaching staff members. It is fairly submitted by Mr. Shelat that any lienholder , if is to be continued till next consultation with GPSC is made and next man is available, then relaxation in qualification of age if recommended by this Court, the State can consider such recommendation and the State as well as GPSC are ready to consider the case of such over-aged ad hoc Lecturers at the time of next consultation or next interview. Ld. Advocate General has pointed out that some teachers who have filed petitions, had decided to withdraw their petitions and accordingly, have withdrawn those petitions, but again they have approached this Court with a view to have similar type of reliefs. Some of the ad hoc Lecturers have continued for long period on account of the stay obtained by them. So, such candidates cannot argue that they are serving since long. Though ld. Senior Counsel Mr. Harubhai Mehta has resisted some submissions of ld. Advocate General Mr. Shelat pointing out that in absence of positive pleading, say of ld. Advocate General Mr. Shelat cannot be considered on merits. Submissions on facts, if are to be made, then it should be brought on record by way of affidavit. Most of the submissions advanced by ld. Advocate General Mr. Shelat are based on facts. So these submissions cannot be considered. Main reliance placed by ld. Advocate General is based on the observations of this Court made in para-15 of the decision in Spl.C.A. 2843 of 1991 (Group) (Coram: M.R.Calla,J). Affidavit filed by the State in the month of June,2001 was contrary to and inconsistent with the aforesaid decision of this Court. State has realised that if the decision of the State reflected in the affidavit of 14.6.2001 is implemented, then it would be the case of injustice to regularly selected candidates. Merely because a person has been recommended for interview by Employment Exchange or has been appointed

after publication of advertisement, would not put the ad hoc appointees with GPSC selected candidates on the basis of offer of equal opportunity to all. The say of the State in the last affidavit is not only legal, but is also rational. Referring to the decision of the Apex Court in the case of Krishnan Kakkanath v/s Government of Kerala and others, reported in AIR 1997 SC 128 (para-34), ld. Advocate General has pointed out what can be said to be unreasonableness and arbitrariness in the context of Article 14 of the Constitution. Referring the decision reported in the case of Mukesh B. Desai v/s State of Gujarat & Ors., reported in 1997(3) GCD 645, ld. Advocate General has placed reliance on the observations made in para-9 of the said decision which says:-

> "Ordinarily, the principle of "last Come, First Go" would apply in cases of retrenchment. That is the basic principle of labour law. Where, however, in cases like the present, when Lecturers had been appointed pending regular selection and it is stated in the letter of appointment that if regularly selected candidates are not available, then the appointment will be only for a fixed period of 11 months, it will not be appropriate or legal for a Court to disregard the specific terms of the letter of appointment and allow a Lecturer to continue to remain in office. If the initial order of appointment, restricting the appointment for a period of 11 months is valid, and we have no doubt in our mind that it is so, then the Court cannot, at a later point of time, disregard the terms of appointment and allow a candidate to continue. This is precisely what the appellants want the Court to do but which is not permissible. At the risk of repetition, it is observed that it is open to an employer to make an ad hoc arrangement, by stating that the appointment will be till a regularly selected candidate is available or for a period of 11 months, whichever is earlier. Such a term in the order appointment of an ad hoc employee, who is not selected by the G.P.S.C., which is required by the Rules, would be a valid clause and if this is so, it is not open to the selected candidate to contend that the Court should disregard the period of appointment for which he was appointed and to give a direction which would, in effect, allow him to continue to remain in office. This is more so in a case, like the present one where the appellants belong

to a general category and are occupying posts or claim to occupy posts, which are meant for a reserved category."

21. Relying on the decision in the case of D.D. Upadhyaya & Ors. vs. State of Gujarat & Ors., reported in 1998(3) Vol. 39(3) GLR P. 2264, ld. Advocate General Mr. Shelat has submitted that regularisation on the date of retirement is something different. Relaxation in qualification as to the age can be made by Executive decision, but the recruitment procedure for regular appointment cannot be bypassed.

22. Mr. Shelat has also placed reliance on the decision in the case of Santoshkumar Verma & Others v/s State of Bihar, through Secretary, Department of Urban Development, Govt. of Bihar, New Secretariate, Patna & Others, reported in 1997 SC 975 and has submitted that it is not legally possible to regularise all ad hoc appointees treating their appointment as regular appointment. Referring to paras 4 & 5 of the said decision, Mr. Shelat has submitted that the petitioners have no case for regularising their appointment against regularly selected candidates by the GPSC. Relevant paras 4 & 5 read as under:-

"4. Mr. Gopal Subramaniam, learned senior counsel appearing for the appellants, contend that Section 6(3) of the Bihar Regional Development Authority Act, 1981 (for short, the "Act") gives powers to the Authority to appoint the Secretary and other officers and employees of the Authority. Under proviso thereto, the appointing Authority has the power to appoint any person for a period not exceeding six monoths on any post carrying the minimum salary of Rs. 500/- and above after approval of the State Government and the appointment though for six months will be on regular basis. The authority has not made any statutory rules for the mode of recruitment. The advertisement did not indicate that these were temporary appointments. Therefore, the appellants are entitled to be regularised in the servicae. We find no force in the contention.

5. Section 6(3) of the Act only empowers the Authority to appoint the Secretary, and other officers and employees of the Authority. The power under the proviso is only a breathing elbow

power given to the Authority to make temporary appointments so that the work of the Development Authority goes on pending recruitment. Therefore, when the advertisement was made for the recruitment, it was obviously in furtherance of the power flown under the proviso for a limited period. Thereby, the appointments obviously are only temporary appointments. The appellants realising the limited temporary tenure of the appointments had sought assistance of the Government for regularisation which was negatived by the Public Service Commission. It is seen that these posts are within the purview of the Public Service Commission. Therefore, the Government sought the concurrence of the Public Service Commission and the Public Service Commission had not concurred and, in our view, correctly, with the request made by the Government. Therefore, any regularisation in violation of the recruitment to be made by the Public Service Commission is in contravention of the law. The High Court, therefore, rightly did not issue any mandamus for regularisation of the services made in contravention of the Rules to violate and no mandamus or direction would be issued to violate law."

23. According to Mr. Shelat, selection made by GPSC and recommendations based on such selection are final so far as the State is concerned. Even State is not supposed to see ordersheet of selection committee nor the marksheet. For this purpose, Mr. Shelat has placed reliance on the decision in the case of Commissioner, Assam State Housing & Another v/s Purna Chandra Bora and Another, reported in (1998)6 SCC 619. In reference to petition under Article 226 of the Constitution, the Apex Court has said in para-4 as under:-

" The respondent was appointed temporarily and until appointment of Accounts Assistant was made on a regular basis. He was discharged from service on the day on which five persons were appointed after selection. It is not for the first respondent to challenge the selection on the ground that no written test was held nor was it necessary in these proceedings for the High Court to look at the order-sheet of the selection. The five persons were on probation when appointed, but that did not mean that they were not appointed on regular basis. We find no merits in the case of the first respondent, as

upheld by the High Court.

Similarly, Mr. Shelat has also placed reliance on the decision in the case of J & K Public Service Commission, etc. vs. Dr. Narinder Mohan and Ors., reported in AIR 1994 SC 1808. In para-11 of the said decision, the Apex Court has observed as under:-

"This Court in Dr. A.K. Jain v. Union of India, 1988 (1)SCR 335, gave directions under Art. 142 to regularise the services of the ad hoc doctors appointed on or before October 1, 1984. It is a direction under article 142 on the peculiar facts and circumstances therein. Therefore, the High Court is not right in placing reliance on the judgment as a ratio to give the direction to the PSC to consider the cases of the respondents. Article 142 -power is confided only to this Court. The ratio in dr. P.C.C. Rawani v. Union of India (1992)1 SCC 331, is also not an authority under Art. 141. Therein the orders issued by this court under art. 32 of the Constitution to regularise the ad hoc appointments had become final. When contempt petition was filed for non-implementation, the Union had come forward with an application expressing its difficulty to give effect to the orders of this Court. In that behalf, while appreciating the difficulties expressed by the Union in implementation, this Court gave further direction to implement the order issued under art. 32 of the Constitution. Therefore, it is more in the nature of an execution and not a ratio under art. 141. In Union of India v. Gian Prakash Singh, 1993 (5) JT (SC) 681 this Court by a Bench of three Judges considered the effect of the order in A.K. Jain's case and held that the doctors appointed on ad hoc basis and taken charge after October 1, 1984 have no automatic right for confirmation and they have to take their chance by appearing before the PSC for recruitment. In H.C. Puttaswamy vs. Hon'ble Chief Justice of Karnataka, AIR 1991 SC 295: (1991 Lab IC 235), this Court while holding that the appointment to the post of clerk etc. in the subordinate court sin Karnataka State without consultation of the PSC are not valid appointments, exercising the power under Art. 142, directed that their appointments as a regular, on humanitarian grounds, since they have

put in more than 10 years service. It is to be noted that the recruitment was only for clerical grade (Class-III post) and it is not a ratio under Art. 141. In State of Haryana vs. Piara Singh, 1992 (4)SCC 118 at 152:(1992 AIR SCW 2315), this Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad hoc or temporary employees by regularly selected employees, as early as possible. The temporary employees also would get liberty to compete along with others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc or temporary employee. Ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee. He must be replaced only by regularly selected employee. The ad hoc appointment should not be a device to circumvent the rule of reservation. If a temporary or ad hoc employee continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. It is to be remembered that in that case, the appointments are only to Class-III or Class-IV posts and the selection made was by subordinate selection committee. Therefore, this Court did not appear to have intended to lay down as a general rule that in every category of ad hoc appointment, if the ad hoc appointee continued for long period, the rules of recruitment should be relaxed and the appointment by regularisation be made. Thus, considered, we have no hesitation to hold that the direction of the Division Bench is clearly illegal and the learned single Judge is right in directing the State Government to notify the vacancies to the PSC and the PSC should advertise and make recruitment of the candidates in accordance with rules."

24. Placing reliance on the decision in the case of E. Ramakrishna & Ors., vs. State of Kerala & Ors.,

reported in 1996(10) SCC 665, and ratio of the decision of Gujarat High Court in the case of Dr. M.A. Haque & Others v/s Union of India, reported in 1993(2) SCC 213, Mr. Shelat has submitted that facts of these cases are totally different. Case of Mera Massey (supra) i.e. AIR 1998 SC 1103, is a case of mercy exercised by the Apex Court. The case of AMC v/s VJ Shah reported in 1998(1) GLR Page 17, is also based on different set of facts that do not deal with the recruitment where consultation of PSC is must on account of statutory rules and constitutional requirement. Similarly,in the case of State of Haryana & Ors. vs. Piara Singh & Ors., reported in (1992)4 SCC p. 118 cited by ld. counsel appearing for the ad hoc Lecturers also would not help them because it relates to the workcharge employees. In the cited case, no selected candidates were available and the posts were not of Class:II. The decision of this Court cited by ld. counsel Mr. Vora appearing for the petitioners does not deal with statutory rules. Regularisation by University is not relevant and it would not give strength to the case of regularisation. University grants approval to a particular individual Lecturers in reference to basic educational qualification and with a view to enable the Institute to accord grant from UGC. The criterias are totally different in both the cases. Mr. Shelat has pointed out that some such did approach for regularisation in response to the advertisement published and got protection on their selection. Candidates who have UGC eligibility today, they can be regularised if they are declared successful in next consultation, but the candidates who do not have eligibility, their case cannot be considered for regularisation or even at the time of next consultation. It is submitted that recruitment is not subject to clearance of SLET or NET examination. It is not a condition precedent.

(i) Referring to the decision in the case of The Commissioner, Corporation of Madras v/s Madras Corporation Teachers' Mandram and others, reported in AIR 1997 SC 2131, Mr. Shelat has submitted that the Court cannot create post nor the Court can say to change the policy involving expenditure etc. So, this Court has no jurisdiction to direct to create supernumerary post or to direct the State Government to protect salary or to give special allowance treating them surplus or specially protected teachers. It is further submitted that against the future vacancy, they cannot be treated on the list of candidates on waiting list. For short, according to Mr. Shelat, this Court should accept the stand taken by the Government in the second affidavit denying the

allegations made by one of the petitioners in Spl.C.A. No. 2795/2001 (Group). (matters of ld. counsel Mr. Paresh Upadhyay wherein he has made allegations against Education Minister who was one of the concerned group of persons at the time when first affidavit was filed by the State).

25. In response to the submissions made by ld. counsel Mr. Vora, ld. Advocate General Mr. Shelat has clarified that the observations of the Division Bench in group of LPAs preferred, are not based on any statutory rules. Language of the decision of the Division Bench in group of LPAs has recommended that the representation made should be considered and government is supposed to consider the representation in reference to the statutory rules for appointment of Lecturers. Supreme Court, in the case of Ratanlal & Others etc. v/s State of Haryana and others, AIR 1987 SC 478, gave direction to the state Government to the effect that government should take immediate steps to fill up in accordance with relevant rules the vacancies in which Teachers appointed on ad hoc basis are now working and to allow all those teachers who are now holding the post on ad hoc basis to remain on those posts till vacancies are duly filled up. The Teachers who are not working on such ad hoc basis, if they have prescribed qualification, may also apply for being appointed regularly on those posts. Government was directed that it may also consider sympathetically the question of relaxing the qualification of maximum age prescribed for the appointment on those posts in case of those who have been the victim of the system of ad hoc appointment. According to Mr. Shelat, the Government had issued and even can still recommend relaxing the qualification of maximum age, but the question of regularisation directly ignoring GPSC selectees cannot be made and, therefore, second affidavit in consonance with and as per settled legal position has been filed. Regularisation by University or approval of a particular Lecturer by University is not relevant so far as the recruitment of Teachers in government college is concerned. Some of them did approach for regularisation and they are given protection and now as regular appointees by GPSC are available, ad hoc appointees are bound to be replaced by these GPSC selectees. Other eligibility as per UGC norms is found absent today, therefore, in many of the cases regularisation is not possible even by relaxing the maximum age. Clearance of SLET or NET examination is not a condition precedent and selectee can clear such examination after his selection/ appointment. Recruitment mostly is subject to clearance of such test. So, such recruitment or posting cannot be

equated with any ad hoc appointment. So, it is not the case of replacement of an ad hoc vice ad hoc. It is just similar as clearing of departmental examination. If a selectee is not able to clear said test, then he is supposed to loose job. Referring to paras 4 & 5 in the case of C.M. Singh v/s H.P. Krishi Vishva Vidyalaya & Ors., 1999(9) SCC 40, it is submitted that the decision of the government and second affidavit should be upheld. Ld. Advocate General has also submitted that this Court also should not issue any directions to the State Government to create certain number of posts with a view to adjust college teachers who are likely to loose their job. Relying on the decision in The Commissioner, Madras Corporation (Supra), it is submitted that the Court cannot create posts nor this Court can direct the government to change the policy involving huge expenditure. Powers of this Court under Article 226 of the Constitution should not be stretched, according to Mr. Shelat, for creating supernumerary post and/or to change policy of recruitment.

26. Mr. Paresh Upadhyay, ld. counsel appearing for petitioners in group of petitions preferred by GPSC recommended candidates, has submitted that for no fault on the part of the petitioners (petitioners in SCA No. 2395/2001 Kamlesh Gobarbhai Patel & Ors.), they are constrained to approach this Court against the illegal and arbitrary action of the State Government of not giving appointment to the petitioners on the post of Lecturers, though selected and recommended by the GPSC after due process of selection. His further grievance is that against the clear vacant posts though the petitioners have been selected by GPSC, ad hoc Lecturers who were appointed subject to availability of GPSC selected candidates, are continued in service. After the lapse of reasonable time, such petitioners can legitimately expect appointment. After clearance of test, testimonials are also examined and scrutinised. Referring to the Govt.Resolution dated 16.1.1969 issued by General Administration Department, Mr. Upadhyay has pointed that as per policy in no case, delay beyond six months in respect of the recommendation to the appointment by direct selection, should occur and, therefore, only the GPSC selected candidates have approached this Court. It is submitted that the government resolution dated 27.8.1997 (Page-22 of SCA 2395/2001) is a policy resolution and the same is in reference to the government resolution dated 16.1.1969. This Court, while dealing with Spl.C.A. No. 2843/91 and other allied matters, has considered all the aspects which are relevant so far as present issue which is

brought before the Court is concerned. It was brought to the notice of ld. Single Judge on the date of decision i.e. 9.3.2001, by ld. counsel appearing for both the sides, that number of petitions concerning the same or similar grievance have been filed, some of which have been decided and some of them have remained pending and certain matters are decided on 12.5.1999. Ld. Single Judge, considering the totality of facts and circumstances of the case, directed the respondents in all group of petitions decided by the common judgment that :-

"15. In the facts and circumstances of the present cases, it is directed that :-

(i) None of the petitioners shall be terminated untill a regularly selected candidate is available for appointments in the concerned Branch/Speciality/ Subject;

(ii) If regularly selected candidates are available, they will not be made to wait and such regularly selected candidates shall be given appointment and the ad hoc appointees shall have to make room for them. Of course, in doing so, the government would follow the order of seniority according to the length of the service of the ad hoc appointees in the respective Branch/Speciality/Subject. In other words, amongst the ad hoc appointees in a gien subject or speciality or branchl, the candidate who was appointed at the ealiest poinit of time will be the last candidate to be replaced;

(iii) Any of the petitioner, if he/she was within the age limit at the time of his/her initial appointment, shall not be debarred from competing in the regular selections on the ground of age if no selections by GPSC were held after the initial appointment;

(iv) It will also be open for the Government to evolve a Scheme to consider the cases of the ad hoc appointees, who have continued for all these years in service,

so that they are not deprived of their competing claims with regard to increments and continuity in service and other consequential benefits etc. shall be decided in accordance with rules.

All these 11 Special Civil Applications are, therefore, partly allowed with the directions as aforesaid. Rule is made absolute in all these Special Civil Applications accordingly. No order as to costs. "

27. The State Government, according to Mr. Upadhyay, is supposed to act accordingly unless any contrary policy decision is taken in accordance with law and statutory rules. First affidavit filed by the State indicating policy after so-called representation being contrary to law and rules and violative of so many statutory norms, litigation cropped up and on realisation, the government has taken, to some extent, proper stand in the second affidavit. Because of referring to the decision by the Division Bench in LPA No. 1057/1999 dated 29.9.1999, first affidavit was filed. Mr. Upadhyay has fairly pointed out that so far as Spl.C.A. No. 3308/90 is concerned, there is no formal challenge by the State Government. Mr. Upadhyay has mostly adopted the submissions made by Mr. D.N.Patel, ld. counsel appearing for GPSC and of ld. Advocate General. Since the submissions of ld. counsel Mr. Upadhyay are mostly similar to the above submissions, no formal mention is required. However, Mr. Upadhyay has placed reliance on the decision in the case of Mukesh B. Desai (supra) and submitted that in the aforesaid decision, one judgment of this Court in the case of Patel Ashokkumar Babulal vs. State of Gujarat & Ors., reported in 1996(2) GLR 535 is referred. This Court, while dealing with the submissions made by ad hoc appointees, after adjusting all the GPSC recommended candidates, can legitimately direct the State Government to apply the principle of "LIFO FIFO". This Court, in the said decision, in para-9, has said:-

"The submission that in view of the principle of first come last go or last come first go necessary direction should be given to the respondents to continue the petitioners in service as ad hoc Lecturers cannot be accepted in the facts of the case. It is true that the ambit and reach of Arts. 14 and 15 are not limited to cases where the public servant affected has a right to a post. Even if a public servant is in an officiating position, he can complain of

violation of Arts. 14 and 16 if he has been arbitrarily or unfairly treated or subjected to mala fide exercise of power by the State machine. Even an ad hoc appointment is an appointment to an office, howsoever, tenuous its character may be. Such ad hoc appointment authorises the appointee (1) to occupy the post, (2) to perform the functions and discharge the duties and (3) to draw emoluments attached to the post. The Government can make short term appointments, even against permanent posts to meet its immediate requirements pending regular appointments to a post. But having once made such appointments, the concerned authority cannot dispense with the services of such temporary ad hoc employees at any time even when the need for filling up the posts on a temporary ad hoc basis still persists. It is well settled that if services of an ad hoc employee are terminated retaining his juniors in service then such termination of services would be in violation of Arts. 14 and 16 of the Constitution (See Jarnail Singh and Ors. v. State of Punjab, UJ 1986(2)(SC) 235). Therefore, there is no doubt that principle of first come last go or last come first go will also be applicable in case of ad hoc employees. However, on examination of the facts, I find that there is no scope for applying the said principle to the facts of the present case. As noted earlier, the strength of the sanctioned posts is 72. Before sending the requisition to G.P.S.C. in the year 1992, twenty posts were filled in by duly selected candidates and even today they are discharging duties as Lecturers. Thus, the figure of the vacant posts would be 52. From the averments made in affidavit-in-reply as well as sur-rejoinder, it is evident that out of 72 sanctioned posts, 16 posts are reserved posts. Admittedly, the G.P.S.C. has not recommended names of 16 duly selected candidates belonging to reserved category because of non-availability of such candidates. Therefore, the question arises regarding the filling in of 36 posts which are available to general category. As pointed out in the reply affidavit, the G.P.S.C. has recommended names of 25 duly selected candidates after following the selection procedure and those 25 candidates have been already appointed on the post of Lecturers. Under the circumstances, the Government will have to fill in eleven posts of Lecturers in the subject of Applied Mechanics.

The Government has received from the G.P.S.C. the waiting list in which names of 14 candidates are included. The Government would be entitled to operate the said list as per the recommendation made by the G.P.S.C. so far as eleven posts are concerned. It is necessary to clarify at this stage that in the affidavit-in-reply it is stated that the workload is of 39 posts. The workload of 39 posts would also include three posts which should be manned by candidates belonging to reserved category. If the Government is permitted to operate the waiting list as received from the G.P.S.C., it would amount to allowing the Government to fill in posts belonging to reserved category by candidates belonging to general category. The question whether Government can be permitted to fill in posts meant for reserved category by candidates belonging to general that as on today 36 posts of Lecturers in the subject of Applied Mechanics are available so far as candidates belonging to general category are concerned. No more posts are available. It is well settled that employees who have been appointed on ad hoc basis on condition that their services would be continued till duly selected candidates are available by G.P.S.C. have no right to continue in service when duly selected candidates by G.P.S.C. are available to fill in the posts (See M.M. Bhagwandas v. State of Gujarat & Ors., 1990(1) GLH 494). For all the 36 posts, candidates who have been duly selected by the G.P.S.C. are available, and therefore, there is no scope for applying principle of last come first go or first come last go. For the foregoing reasons, none of the petitioners is entitled to any of the reliefs on the footing that principle of last come first go is applicable, to the facts of the present case."

29. In the case of Jammu & Kashmir Public Service Commission etc. v/s Narinder Mohan & Others (supra) observations of the Apex Court in paras 7,10 & 11 (referred earlier) are very relevant and has binding force. Total 16 petitions have been filed by GPSC recommended candidates. In one petition i.e. in 17th petition, there are serious allegations made by the petitioners against Education Minister of the State of Gujarat and it is averred that only one person had played vital role in filing of affidavit which is totally

contrary to the law and rules. It is submitted that when a particular legislation there is one thing to be done as per Statute, or norms provided under the Rules framed under the Statute, than it should be done in that manner only and not in any other way. In such a contingency, equity survives no longer. Relying on the observations of the Apex Court in the decision in the case of Ahmedabad Municipal Corporation v/s Virendrakumar J. Patel (supra), it is submitted that at present, Teachers who are appointed on ad hoc basis till regularly selected candidates is made available, had appeared before GPSC in response to the advertisement published, competed with other candidates and who have failed, are still serving as Lecturers. Under such circumstances, there should not be any room for sympathy or equity. In the cited case, Apex Court was dealing with the matter in connection with recruitment of doctors visiting Municipal Corporation Clinics wherein it has been held that :-

> "As noticed earlier, the recruitment of the doctors in the clinic run by the Corporation is made in accordance with the statutory rules and by no other method. Under the rules the vacancies are advertised for inviting applications from eligible candidates. After the applications are received the Selection Committee is continued to select the candidates for appointment in the Corporation's clinic. Only after the candidates are selected are they taken in the service. It is also noticed earlier that the respondent appeared before the Selection Committee but was not selected. Under such circumstances, there is no room for sympathy or equity in the matter of such appointment specially where the recruitment in service is governed by the statutory rules. if the reasoning given by the Tribunal is accepted the statutory recruitment rules would become nugatory or otiose and the Department can favour any person or appoint any person without following the procedure provided in the recruitment rules which would lead to nepotism and arbitrariness. Once the consideration of equity in the face of statutory rules is accepted then eligible and qualified persons would be sufferers as they would not get chance to be considered for appointment. The result would be that persons lesser in merit would get preference in the matter of appointment merely on the ground of equity and compassion. It is, therefore, not

safe to bend the arms of law only for adjusting equity. We, therefore, find that the reasoning given by the Tribunal that sympathy demands the absorption of the respondent in the service of the Corporation! suffers from error of law."

30. Ratio of the decision in the case of P.Ravindran and Ors., v/s Union Territory of Pondicherry & Ors., reported in (1997)1 SCC 350, also needs consideration because ad hoc Lecturers who have not appeared in the interview before GPSC and have opted to continue on their respective ad hoc posts hoping for favourable decision either from the Government or from the Court, or ad hoc Lecturers who have failed in their attempt to get through GPSC scrutiny, cannot be continued and the State should be asked to sack them forthwith by replacing the GPSC recommended candidates.

31. In the case of Subender Singh & Ors.v/s Distt. Judge, Mirzapur & Anr., reported in (2001) 1 SCC P.37, the Apex Court has observed as under :-

"The High Court in the impugned judgment has indicated the gross irregularities and illegalities committed by the District Judge in making the appointments in favour of the appellants. Such illegal/irregular appointees are not entitled to invoke the discretionary jurisdiction of the Court under Article 226 of the Constitution. The anxiety and agony of the Inspecting Judge is apparent from his inspection report and the direction to the District Judge. When the appointment to the posts in question is governed by a set of statutory rules, it is unthinkable that the District Judge would adopt this extra-constitutional method of appointment and that also, by manoeuvring and by deputing the copyists to do some other job and replace them by fresh recruits. The so-called Regularisation Rules, in our opinion, does not intend to regularise the services of the illegal and irregular recruits like the appellants. We have carefully scrutinised the aforesaid Regularisation Rules and we do not find any substance in the arguments of the learned counsel for the appellants that their services ought to have been regularised under the aforesaid Regularisatin Rules."

32. So far as the allegations made by one of the

petitioners against the State Education Minister are concerned, Mr. Upadhyay has tried to draw attention of this Court on the observations made by the Apex Court in para-15 of the decision in the case of Tarlochan Dev Sharma v/s State of Punjab and Others, reported in AIR 2001 SC 2524. However, he has submitted that he is not seeking formal finding of the Court as allegations are very personal in nature against the Minister and the Court is dealing number of matters simultaneously concerning the issue.

33. Ld. counsel appearing for some of the petitioners i.e. Spl. C.A. No. 5154/2001 etc. has submitted that the petitioners have challenged the affidavit filed in the month of June, 2001 wherein the government had indicated earlier that the government will regularise ad hoc Lecturers. Mr. Anjaria, ld. counsel appearing for these petitioners has submitted that though the government has filed second affidavit, the ad hoc Lecturers are still trying to get advantage of first affidavit and the petitioners to whom he represents, are the real sufferers. Total 13 petitioners have contended that in past, some of the petitioners had occasion to file writ petition when State was intending to replace them by other ad hoc appointees. This Court, while dealing with such petitions, directed that the petitioners and such persons shall be allowed to continue till GPSC selectees are available. GPSC was directed to undertake selection instead of continuing with ad hoc appointees. High Court had also directed that any of the persons like the petitioners who either have not applied for selection or failed, shall have no right to continue and that ad hoc appointees shall have to be discontinued once regularly selected candidates from GPSC are available. These 13 petitioners represented by ld. counsel Mr. Anjaria have underwent GPSC selection and have been duly selected and recommended by GPSC. Meanwhile, affidavit in reply which came to be filed by Deputy Secretary, Education Department, has created problem for the petitioners. In that affidavit, the Government has stated that 64 persons appointed as Lecturers having their lien in respective schools at the relevant time are going to be repatriated to their original posts. According to Mr. Anjaria, some of the ad hoc appointees presently serving are trying to get advantage of this first affidavit and have prayed for regularisation. So, if the Court decides, with a view to see that there should be minimum number of termination of service, decision taken by the government of repatriation of 64 Teachers may create problem for the petitioners and they will be asked to join their department-old original

post of Teachers, then they are likely to be prejudiced seriously as they have cleared GPSC test and their names are reflected in the select list. According to Mr. Anjaria, decision of the government reflected in first affidavit is absolutely arbitrary, illegal and violative of Articles 14 & 16 of the Constitution of India. Mr. Anjaria has raised question whether a person who is not selected can be recommended or regularised ? The affidavit which is not supported by any statutory rules or policy should be given any weightage by the Court treating as admission or promise which is simultaneously disadvantageous to a class of persons or a person ? According to Mr. Anjaria, right to be appointed is legitimate expectation of a citizen. The doctrine of fairness is very relevant and government has tried to become unfair to the petitioners represented by him. Doctrine of legitimate expectation and fairness are important limbs of Article 14 of the Constitution. Conduct of State Government should be not only consistent, but reasonable and rational. Placing reliance on the observations made by Hon'ble Mr. Justice S.K. Keshote while dealing with Special Civil Application No. 2273/1990 and group dated 12.5.1999, Mr. Anjaria has submitted that this Court has specifically held that ad hoc appointment continue as ad hoc appointment and ad hoc appointee even if he has put on long services, does not acquire right to hold the post permanently. It continues to be ad hoc appointment and at any point of time, services can be terminated. Continuation of ad hoc appointment for long period does not convert it in regular appointment and more so where posts on which these appointments are made, are within the purview of GPSC. According to Mr. Anjaria, State Government cannot think of regularising ad hoc appointees when a batch of GPSC selected candidates is vary well available with the Government. He has similarly placed reliance on the decision of Hon'ble Mr. Justice M.R. Calla referred to herein above. Quoting relevant date of advertisement, mode of recruitment adopted by GPSC and selection procedure, Mr. Anjaria has submitted that affidavit filed in August i.e. second affidavit filed by the State is as per the recognised principles of service jurisprudence and Constitution. It may be favourable to one and unfavourable to other. It always happens in such contingency, but nobody can continue on the ground of sympathy only. Mr. Anjaria has placed reliance on some decisions. In the case of Dr. Arundhati Ajit Pargaonkar vs. State of maharashtra & Anr., reported in JT 1994 (5) S.C. 378, the Apex Court has held that equity is not attracted when selection is not regular selection. Only equity cannot help the ad hoc appointees for

regularisation.

34. The petitioners represented by Mr. Anjaria have challenged the affidavit of 14.6.2001 wherein in sub-para (3) para-2, it has been stated by the Government that " all 64 persons having their lien on the post in their respective schools and appointed as ad hoc Lecturers in government colleges, should be repatriated to their original post." When on 14.6.2001, first affidavit on behalf of State of Gujarat was filed, the government was already served with the notice of this Court issued while entertaining Spl.C.A. No. 3807/2001 filed by Mr. M.T. Kasundra & Ors. and had passed the following order :

" Notice returnable on 15.6.2001. In the meanwhile, status quo as regards the conditions of service of the petitioner shall be maintained. Direct Service is permitted."

35. The petitioner of Spl.C.A. No. 3807/2001 Mr. M.T. Kasundra is serving as Lecturer on ad hoc basis and he has been appointed from teachers serving in the government school. The petitioners are regularly selected candidates. So, the candidates who are not selected whether can be accommodated is the question posed by these petitioners. According to Mr. Anjaria, this contention of the State Government is neither supported by any law nor by its own stand taken earlier in the similar proceedings and, therefore only the petitioners are pleading the case of the legitimate expectation. The contents in principle of second affidavit filed in the month of August 2001 are recognised by the Constitution. It is favourable to the petitioners, though they are appointed on ad hoc basis.

36. Mr Anjaria in support of his say has placed reliance on the decision in the case of Punjab Communications Ltd. vs. Union of India and Ors., reported in (1999)4 SCC 727. Referring to para-27, 37 to 39 of the said decision, it is held that the principle of "legitimate expectation" is still on such evolution. So, principle is on the root of rule of law and requires regularity, predictability and certainty in government's dealings with public. Basic principle in breach relating to legitimate expectation, according to Mr. Anjaria were enunciated by Deploc in Council of Civil Service Unions vs. Minister for the Civil Service, reported in 1985 AC 374.

37. It has been observed in that case that for legitimate expectation to arrive, decision of the

administrative authority must affect the person by depriving him of some benefit or advantage. Substantive part of the order is that if a representation is made that a benefit of substantive nature will be granted, or if a person is already in receipt of benefit, that it will continue and not to be substantially varied, then the same should be enforced. Interest in regard to legitimate expectation could be had, must be one which was protective- expectation should be based on expressed promise or representation or by established past action or settled conduct. The representation must be clear and unambiguous. For convenience, it would be proper to quote relevant part of paras 37 to 39 of the aforesaid decision in the case of Punjab Communications Ltd. (supra), because the observations are arrived at after a long survey of number of cases. The Apex Court has observed :-

"37. The above survey of cases shows that the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and that the decision-maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way. The judgment in Raghunathan case requires that reliance must have been placed on the said representation and the representee must have thereby suffered detriment."

"38. The more important aspect, in our opinion, is whether the decision-maker can sustain the change in policy by resort to Wednesbury principles of rationality or whether the court can go into the question whether the decision-maker has properly balanced the legitimate expectation as against the need for a change. In the letter case the court would obviously be able to go into the proportionality of the change in the policy."

"39. This aspect has come up for consideration recently in the Engligh courts. The debate was started by Laws, J. in R.v. Secy. of State for Transport, ex p Richmond upon Thames London BC where the learned Judge laid down that the Wednesbury reasonableness test alone applied for finding out if the change from one policy to another was justified. That was a case in which

in relation to airports a new system of night-flying restrictions were imposed. The new policy related to the fixation of the maximum number of take-off and landing movements variable according to the type of aircraft involved and the noise the aircraft generated during the night-time. The Wednesbury test was held applicable. Laws, J. Stated:

> "The court is not the Judge of the merits of the decision-maker's policy...the public authority in question is the Judge of the issue whether 'overriding public interest' justifies such a change in policy. But that is no more than saying that a change in policy, like any discretionary decision by a public authority, must not transgress Wednesbury principles."

38. In view of the principles of law, it can be held that the Lecturers appointed on ad hoc basis are not forming a class jointly or individually, cannot claim that they were in the past permitted by the decision-maker to enjoy and which they can legitimately expect to be permitted to continue and there shall not be any withdrawal of such enjoyment. On the contrary, second affidavit is on rational ground for withdrawing the benefit and for which they have been given an opportunity to comment. Further opportunity to appear in GPSC test was also offered. Opportunity for advancing reasons for contending that a particular enjoyment should not be withdrawn was also given. So, ad hoc Lecturers who are selected by GPSC are forming a different class. If this Court says that regularisation in service as college teachers in government colleges should be given in view of first affidavit of June-2001 and other set of facts under the principles of legitimate expectation, then the petitioners are entitled to get regularisation and on the other hand if the Court decides that the college teachers appointed on ad hoc basis till regularly selected candidates are made available, then these petitioners and others who are at present serving on ad hoc basis who have cleared GPSC test, can legitimately expect that they shall be appointed in view of the constitutional recognition and they become regularly selected candidates. It is rightly submitted that merely because they were, at the relevant point of time of their selection by GPSC, were in college, cannot be treated as a matter of disadvantage to them against the candidates who have cleared the GPSC test from open market.

39. The other decision cited by Mr.Anjaria is in the case of M.P. Oil Extraction & Anr. vs. State of M.P. & Anr., reported in 1997(7) SCC P.592. Referring para-31, 44 & 45 of the cited decision, Mr. Anjaria has submitted that doctrine of legitimate expectation operates in the domine of public law and in appropriate cases, constitutes and substitute an enforceable right. The Apex Court was dealing with policy decision of State of Madhya Pradesh in respect of protective measures for selected industrial units. But the ratio of the said decision directly helps the present petitioners represented by ld. counsel Mr. Anjaria and other candidates who have been selected by GPSC against the persons serving on absolute ad hoc basis. Decision in the case of Jammu & Kashmir Public Service Commission etc. (supra), should be considered in light of the above-referred two decisions of the Apex Court analysing and relevance of principles of legitimate expectation and from that angle, above-referred para-7 of the cited judgment becomes very relevant and important. Apex Court in the case of J & K Public Service Commission etc. (supra), has said in para-7:-

"7. Existence of statutory Rules is not a condition precedent to appoint an eligible and fit person to a post. The executive power is co-extensive with legislative power of the State and under Art.162, the State can create civil posts and fill them up according to executive instructions consistent with Arts. 14 and 16 of the Constitution. It is settled law that once statutory rules have been made, the appointment shall be only in accordance with the rules. The executive power could be exercised only to fill in the gaps but the instructions cannot and should not supplant the law, but would only supplement the law. The Governor exercising the power under provision to S.125 (Art.309 of the Constitution of India) made the rules which do not expressly give the power to the State Government to make ad hoc appointments. No such rule has been brought to our notice. No express power was conferred and in fact cannot be conferred to relax the rules of recruitment. Having made the rules the executive cannot fall back upon its general power under Art.162 to regularise the ad hoc appointments under the Rules. Rule 9(3) empowers only to relax the qualification of age in particular exigencies which cannot be called in aid to relax the rules

of recruitment. To tide over unforeseen exigencies, power to make ad hoc appointments may be visualised as envisaged by Explanation-b to Rule 4 but it expressly states that by virtue of such appointment, the ad hoc appointee does not become member of the service. The rule prescribes direct recruitment/ promotion by selection as the mode of recruitment which would be done only by PSC or promotion committee duly constituted and by no other body. Therefore, ad hoc employees should be replaced as expeditiously as possible by direct recruits. A little leeway to make ad hoc appointment due to emergent exigencies does not clothe the executive government with power to relax the recruitment or to regularise such appointment nor to claim such appointments to be regular or in accordance with rules. Back door ad hoc appointments at the behest of power source or otherwise and recruitment according to rules are mutually antagonistic and strange bed partners. They cannot co-exist in the same sheath. The former is in negation of fair play. he latter are the products of order and regularity. Every eligible person not necessarily be fit to be appointed to a post or office under the State, selection according to rules by a properly constituted commission and fitment for appointment assures fairness in selection and inhibits arbitrariness in appointments. In view of the Explanation-b of Rule 4, the ad hoc appointments to any post in any of the three wings of the services under the rules are therefore de hors the rules. Appointments of the respondents 1 to 6 cannot be held to be in accordance with rules. "

40. Placing reliance on the decision in the case of Hindustan Shipyard Ltd. & Ors. v/s Dr. P.Sambasiva Rao & Others, reported in 1996(7) SCC 499, it is correctly argued that in the field of service of law, regularisation of ad hoc appointment can be affected only in accordance with rules for direct appointment. The Apex Court was dealing with the matter of regularisation of ad hoc Medical Officer. In para 9 & 11 of the judgment, by referring to the case of Dr. A.K. Jain & Others v/s Uniion of India & Others, reported in 1987 Supp. SCC 497, the Apex Court has observed in para-11 that :-

" The decision of Dr. A.K. Jain v. Union of India on which reliance has been placed on behalf of the respondent medical officers, does

> not lend any assistance to them. In that case it was directed that the regularisation of the Assistant Medical Officers/ Assistant Divisional Medical Officers who were appointed on ad hoc basis up to 1.10.1984 shall be made in consultation with the Union Public Service Commission on the evaluation of their work and conduct on the basis of their confidential reports in respect of a period subsequent to 1.10.1982. In M.a. Haque (Dr.) v. Union of India, this Court has deprecated the practice of bypassing of the Public Service Commission which would open a back door for illegal recruitment without limit. The direction given by the High Court that the respondent Medical Officers should be regularised with effect from 1.4.1986 cannot, therefore, be upheld. The only direction that can be given in the matter of regularisation is that the respondent medical officers should be considered by a duly constituted Selection Committee as per the Rules for the purpose of regular appointment on the post of medical officer and the appellant Corporation should constitute a Selection Committee for that purpose."

41. As per the ratio of this decision college teachers who were serving on ad hoc basis if they fall in the category of qualified candidates, then they ought to have applied and appear in the test conducted by GPSC and should have secured regularisation. This decision supports submission of ld. Advocate General where he has submitted that this Court cannot straightway direct the government for regularisation of service of ad hoc Lecturers serving on ad hoc basis deviating regular recruitment procedure which is provided by rules for direct appointment. The same principle has been propounded by the decision in the case of P. Ravindran & Others (Supra), where the Apex Court has held that " regularisation of ad hoc appointees byepassing process of recruitment through open competition, is not permissible. The Apex Court was dealing with SLP arising from the orders of Administrative Tribunal. The petitioners before the Apex Court were appointed as Lecturers on ad hoc basis and some of them had obtained M.Phil, Ph.D also. When regular recruitment by GPSC was conducted, the petitioners had appeared before the Committee, but they were not selected. Subsequently, they filed petition for regularisation of their service. In the impugned order, Tribunal had pointed out that since posts are required to be filled up by recruitment from open

market through Commission, the Tribunal has no power to issue directions to regularise service. This decision of the Administrative Tribunal was under evaluation before the Apex Court and the Apex Court held;

" The Commission having been entrusted with the constitutional duty to select suitable candidates by inviting applications from the open market, every candidate has a fundamental right to seek consideration and for selection through open competition. The petitioners also have that right. Therefore, the process of recruitment through the Commission, as envisaged under the Constitution, cannot be bypassed by issuing direction for regularisation of the services of the ad hoc persons who had come to the service through back-door entry."

43. In the case of Subedar Singh & Another (supra), the Apex Court was asked to consider the prayer advanced for regularisation by ad hoc appointees. Illegal or irregular ad hoc appointees had approached the Apex Court and the Apex Court after examining contentions raised, has negatived the plea of such appointees.

44. There is no right to have regularisation unless ad hoc appointees clears the test for procedure of recruitment provided under the rules of recruitment. In the case of Dr. Arundhati Aji Pargaonkar v/s State of Maharashtra & Anr., reported in 1994 JT Vol.5 P.378, the Apex Court had negatived the contentions based on the principles of equity. The Apex Court has observed that eligibility and continuous working for howsoever long period should not be permitted to overreach the law. Requirement of rules of selection, through Commission, cannot be substituted by human consideration. Law must take its course. Consequently, the appellant i.e. Dr. Arundhanti was held to be not entitled to claim that she should have been deemed to have regularised as she had been working without break for 9 years. When human consideration used in this judgment deals with element to equity keeping out from the facts in number of petition, where Lecturers appointed on ad hoc basis are serving since long and they were qualified at the relevant point of time when they were appointed on ad hoc basis under the selection method evolved by the Higher Education Department of the State of Gujarat. Though principle reflected in Article 14 of the Constitution is on very high pedestal, but only equity cannot have any role to play. So, arguments mostly based on human consideration and principle of equity or convenience or hardship, is

misconceived. Apprehension expressed by Mr. Anjaria is that second affidavit filed in the month of August 2001 has created fear and apprehension of injustice and, therefore, decision to send all ad hoc Lecturers who were Teachers or members of staff in the education department, needs to be set aside and this Court should hold and direct the State Government that Lecturers at present serving on ad hoc basis who have passed through GPSC test, should be appointed on regular basis and the ad hoc Lecturers selected from the Teachers or staff members serving with education department, on account of selection of candidates by GPSC following the procedure for direct recruitment of Lecturer, should be asked to go to respective department on repatriation following the principles of "last cum first go" by treating ad hoc Lecturers as one class. Mr. Anjaria has pointed out that out of 11 petitioners, petitioner no.8 has been appointed by the government after his regular selection by GPSC and, therefore, no formal prayer requires to be granted qua this petitioner no.8 namely Harisinh V. Solanki. The petition, so far as this petitioner no.8 is concerned, should be treated as disposed of as not pressed. It is further submitted by Mr. Anjaria that appointment of ad hoc Lecturers who have been selected by GPSC and require to be appointed, the department should be further directed not to treat them as re- or fresh entry in the department. They should be treated continuous and formal break in service should not be given. Pointing out the decision of this Court in SCA No. 2843/1991 & Group (Coram : M.R. Calla,J), it is argued that prayer for regularisation was already made in previous petition by the respective petitioners and the same was not granted. So, this type of prayer in the petition preferred by GPSC selected candidates cannot be granted to the respondents who have approached this Court for the first time praying relief for regularisation or protection of their service by raising other similar contentions, should not be granted such relief and the same should not be negatived for the reasons stated by this Court in the above-cited decision and other decisions in Spl.C.A. No.2283/1990 & Group, dated 12.5.1999 (Coram : S.K.Keshote,J).

46. Decision of the government reflected in first affidavit of 16.4.2001 has been given go-bye with the affidavit of 30.8.2001. State Government has mostly taken consistent stand when State was asked to think over about regularisation of ad hoc Lecturers and to consider the representation, if made, when affidavit of 14.6.2001 was filed. But as the stand taken by the government being not supported by law and was against the basic

principles of service jurisprudence by the Apex Court and recognised by the Constitution and the scheme evolved in reference to Article 309 of the Constitution, the government was compelled to take appropriate, legal and correct stand. According to Mr. Anjaria, this explanation offered by ld. Advocate General on behalf of the State, should be accepted protecting the petitioners of Spl.CA No. 3807/2001, by granting appropriate reliefs.

47. Ld. Senior Counsel Mr. B.P. Tanna representing the Hon'ble Minister- respondent no.4 in Spl.C.A. No. 5436/2001, has submitted vehemently that allegations made in the petition are baseless placing number of facts and stages of movement of government file in normal course of business and the earlier decision and after referring the observations of LPA Bench, it is submitted that respondent no.4 individually was not able to even influence the decision taken by the State Government. These allegations have been made only with a view to boost somebody's ego and to demoralise the approach of the Government where government has shown some enthusiasm to show sympathy in favour of the persons who are serving in Higher Education department of the State of Gujarat since years and the decision taken at the relevant point of time, was a policy decision in the file was moved from the lowest cadre officer to the Hon'ble Chief Minister. Not a single individual is permitted to take any policy decision. Critising the mode and method of allegation and by referring number of decisions, Mr. Tanna has submitted that this Court should hold that allegations are vague, very general in nature and as the decision not being of one man's decision, this Court should refuse to pass any comment favouring the petitioner or critising the Hon'ble Minister. Merely because the government has expressed conflicting views or shown different priority or expressed its interest in the matter in different ways, Hon'ble Minister heading a particular department cannot be criticised in the manner in which the petitioners have tried. On the contrary, according to Mr. Tanna, this Court should hold that the allegations by the petitioners are malafide and the same are made to see that subsequent decision of the government taken in the month of August 2001 is implemented . Mr. Tanna has placed reliance on the decision reported in the case of Forward Construction Co. & Others v/s Prabhat Mandal (Regd.) Andheri and Others, reported in 1986(1) SCC 100. Especially referring to para-27 of the said decision, Mr. Tanna has submitted that the say of the petitioners should be turned down by this Court.

48. Of course, Mr. Paresh Upadhyay, ld. counsel appearing for the petitioners of Spl.C.A. No. 5436/2001 has submitted that though the petitioner is able to establish, in fact, that the allegations are genuine and on production of number of documents and some files from the Secretariate may bring home the truth. However, in view of the submissions of ld. Advocate General appearing in the matter and the stand taken by the State Government and especially Hon'ble Education Minister, the petitioners have not pressed for any formal decision as regards the allegations made against respondent no.4 in the said petition. Without entering into the controversy and arguments advanced before this Court so far as the present petition i.e. Spl.CA No. 5436/2001 is concerned, I am not inclined to record any finding in that regard. Obviously, therefore, the allegations remained unsustained.

49. On perusal of the record of each petition of these group of petitions and rival contentions, some important issues which has arisen require to be analysed and answered in light of the deliberating comments by the ld. counsel appearing for the parties. When LPA Bench was dealing with LPA No. 611/99, Bench had directed on 11.1.1999 to put up details of various writ petitions moved encircling the same or similar issues in connection with the appointment of Lecturers in Govt. Colleges. Ld. counsel Mr. D.P. Vora has submitted list of such petitions, copy of which is produced during the course of hearing, for perusal of this Court. The said list was prepared and submitted on 28.1.2000. It indicates that in the year 1988, two petitions were filed; in the year 1990, six petitions were filed. Similarly, in the year 1991, three petitions, in 1992, five petitions; in 1993, five petitions; in 1994, twelve petitions; in 1995, nine petitions; in 1996, four petitions; in 1997, eight petitions; in 1998, eighteen petitions; and in the year 1999, one petition was filed. Total 73 petitions were filed. Short summary prepared by ld. counsel Mr. Paresh Upadhyay indicates that subjectwise writ petitions filed in the year 2001 can be divided in 16 different groups, if they are to be decided subjectwise. These petitions are moved by GPSC selected candidates.

50. It is important and relevant to note that some of the petitioners who are at present serving as LL on their ad hoc appointment, have approached this Court in the past by way of filing writ petitions and, therefore, such petitioners are bound by the orders passed therein. Some such petitioners had withdrawn their petitions. So, their plea is to consider their case for regularisation

in the same cadre as they cannot approach this Court again. The case of all such petitioners would be governed by the rule of res- judicata. Unless a specific or distinct set of facts are brought to the notice of this Court by any of the Lecturers individually, the order or binding observations made by this Court in earlier petitions, obviously would materially affect all similarly situated petitioners. The fact emerging from the documents Annex.A-I attached to the further affidavit-in-reply filed by Deputy Secretary, Education Department, Gandhinagar, has not been disputed by any of the counsel appearing for the parties. This Annex.A-I indicates that 27 different petitions and all these petitions were filed by the ad hoc Lecturers holding lien on their respective post in the department. This Annex.A-I positively indicates numbers of petitions filed by the petitioners in the year 2001 and the earlier petitions filed in the year 1998. Petitions filed in the year 1998 were decided on 12.5.1999. Annex.A-III attached to the said affidavit indicates names of the petitions along with relevant numbers of writ petitions giving details of types of ineligibility which have prevented them in getting regular appointment as Lecturer. Total 26 Lecturers are not satisfying any of these two criterias or both i.e. educational qualification and the age. Petitioners of Spl.C.A. No. 3023/2001 Mr. R.R. Harshani & others, as per this list, five Lecturers serving as ad hoc Lecturers, at present, do not possess qualification prescribed by UGC. The petitioners of SCA No.3023/2001 Mr. R.R. Harshani & Mr.A.A.Trivedi as well as petitioners of Spl.C.A. No. 4102/2001 Mr. D.B. Sureja and Mr. N.K. Gupte, petitioner of Spl.C.A. No. 5624/2001 Mr. S.S.Shah, do not possess requisite educational qualification. Out of these five petitioners, Mr. A.A. Trivedi and Mr. D.B. Sureja also were over-age. So, scope of clearing GPSC selection process would not help these petitioners. In the same way, petitioners who have no requisite qualification as per UGC Norms, whether such qualification can be relaxed by the order of this Court and respondent State should be directed to consider the case of such petitioners, is also one of the important question. It has been submitted that on the date of their respective appointment as ad hoc Lecturer, all these five Lecturers and all other similarly situated Lecturers serving on ad hoc basis, were qualified to be appointed as College Teacher and, therefore, subsequent modification in the minimum educational qualification would not become an embargo in regularising them as College Teachers. But this submission, in light of the ratio propounded by the Apex Court, is not found

acceptable. Their respective appointments were subject to availability of GPSC selected candidates and supposed to be relieved or terminated immediately on availability of regular selectees. Of course, they were entitled to appear and compete with other candidates, during the selection process of GPSC, inaction on the part of State Government in sending requisition to GPSC to prepare select list for the vacant posts of Lecturers and/or some inaction on the part of GPSC for delay in initiating the selection process, would not create any legal right in favour of the candidates who have been appointed on stop-gap arrangements. The day on which GPSC started process for recruitment, would be relevant date to determine adequacy of requisite qualification. If UGC modifies requisite qualification for appointment of Lecturers or if government decides to have some more educationally qualified candidates, then applying incumbent on the date of initiation of process of recruitment, at least must have minimum required qualification. Ad hoc Lecturers who are at present serving and have requisite educational qualification, but have grown older and have crossed the age limit, then what approach this Court should exhibit is another different issue raised before this Court. The Apex Court has issued directions to the contesting respondents may be the State, University or Municipal Corporation and, therefore, the decision of the Apex Court has to be followed. Ld. Advocate General has fairly submitted as mentioned earlier, that this Court if decides to give appropriate directions so far as qualification as to age is concerned, then respondent State shall consider such direction and has rightly submitted that there cannot be any compromise with or relaxation in educational qualification. It is on record that UGC has issued necessary provisional acredition to hold one State Level Eligibility Test (SLET) within six months from the date of issuance of the letter i.e. 18.l8.2001. This letter is on record. M.S. University, Vadodara has been assigned this work by the State Government. Candidates besides fulfilling minimum academic qualifications, should have qualified in comprehensive test which is to be conducted by either NET or SLET for the purpose. If any of the ad hoc Lecturers who have no requisite qualification to appear in either of these two tests, then case of regularisation or offering them one more chance to get through GPSC selection process would become fruitless and redundant because in any of the decisions either by this Court or by other High Courts or by Apex Court, the Court have not exercised its jurisdiction or has shown inclination in issuing directions to relax educational qualification. When a teacher is to be

recruited, manimum prescribed educational standard should not be relaxed. Equity would not have any role to play in such matters, otherwise, it may give rise to so many complications including favourtism, nepotism and arbitrariness in administration and I am afraid that same would open a window to back-door entry and subsequent regularisation of such appointments irrespective of minimum prescribed educational qualification.

51. Normally, the action to fill up post is to be taken well in advance before vacancy occurs. However, in case where direct recruitment is the only method provided in recruitment rules, then recruitment procedure normally should start well in advance including the vacancies in excess of certain dates if there is any guidelines. As no regular appointment or recruitment process had started, in exceptional circumstances, Lecturers are appointed on ad hoc basis and the same are made for limited period of one year only. Practice to give breaks periodically and appointing some persons on ad hoc basis has not been permitted, but it is accepted principle in the field of service jurisprudence that where ad hoc appointment by direct recruitment is being done as a last resort, it should be ensured that the persons appointed are those nominated by Employment Exchange concerned and they also fulfil stipulation as to educational qualification, experience and upper age limit prescribed in the recruitment rules. Ad hoc Lecturers presently working were at the relevant point of time, satisfying these norms. It is not also a matter of dispute that while appointing ad hoc Lecturers, consideration of claims of SC & ST candidates has been considered by the Government. However, the fact remains that appointment of each such ad hoc Lecturer has remained ad hoc appointment and their services are subject to the availability of direct recruitment and regularly selected candidates by PSC. Undisputedly, the post of College Lecturer is a post of Class : II - Gazetted post. Teachers or staff members serving in the Education Department when they were appointed as Lecturers on ad hoc basis, they were in the cadre of Class: II Govt. Servant and their appointment as Lecturers in government College is not a case of promotional post. Even that is not the case and there is no such provision in the recruitment rules. Lecturers in government College are to be appointed by direct recruitment and each incumbent is supposed to pass through PSC Selection process . It is a constitutional requirement. It is not necessary to quote Article 320 of the Constitution of India. This Article provides for functions of PSC. Clause : III of Article 320 of Constitution is only a directory and not

mandatory. Non-compliance by itself would not invalidate the action taken by the government and advise given by PSC is not binding to the government, but when there is no justification for ignoring the provisions in practice. If the Government, by its own rules, binds itself to accept Commission's recommendations, then such rules shall have relevance. Policy laid down by the State of Gujarat by framing rules and issuing guidelines under Article 309 of Article, is important and in the present case, GPSC selectees have rightly agitated that their selection by GPSC is not being given effect though specific policy has been laid down by the State of Gujarat vide Govt. Resolution dated 16.1.1969 and subsequent government resolutions including Govt. Resolution No. PHC/ 1086/1342/GR dated 27.8..1997.

52. In the decision in the case of State of Haryana v/s Pyara Singh, 1992(4) SCC P.118, the Apex Court, by referring the case of Dr. A.K. Jain (Supra), has said that "if for any reason ad hoc or temporary employee is continued for fairly long spell, authorities must consider his case for regularisation, provided he is eligible and qualified according to rules and appointment does not run counter to the Reservation Policy of the concerned State. Ratio of this decision would not help ad hoc Lecturers because of subsequent decision of the Apex Court and the fact that each ad hoc Lecturer was entitled to apply and get through selection process of GPSC. In the case of Ajra Singh (supra), it would not be correct to say that eligibility and qualification according to rules means as per norms on the date on which such ad hoc appointee was recruited. Regularisation, as per rules, when is not provided, so such regularisation should be made and can be made because the same would be equal to regularisation of the back-door entry on civil post of Class:II- Gazetted. It would be beneficial to refer to paras 25 & 26 of the decision of the Apex Court in the case of Dr. (Mrs) Meera Messey & Others v/s Dr. S.R. Mehrotra & Ors, reported in 1998(2) All India Services Law Journal, Page 178 wherein Apex Court has said:-

"25. However, we find that all the appellants have been regularised as teacher and appointed as Lecturers approved by the Executive Council since 1986 more than 11 years back. Respondent No.1 Dr. Mehrotra very fairly states he has nothing against these appellants. They are all competent teachers fully qualified to be appointed as such. We feel setting aside and disturbing their appointments now would create great turmoil and

would affect the teaching in the University and, in turn, the students at large even to the appellants also, who in the hope continued for long. We feel it would not be appropriate on the facts and circumstances of this case to set aside their appointments as teacher.

26. In Shainda Hasan v. State of Uttar Pradesh and Others, 1990(3) SCC 48, it was a case where appointment of the Principal was held to be illegal but since she was working in the college for 16 years it was felt to be unjust to make her leave the post, hence in spite of that she was permitted to continue."

53. The say of the Apex Court reflected in these two paras indicates that this Court can take and should take equitable view considering the length of service of large number of ad hoc appointees. Considering the relevant date of recruitment of all ad hoc Lecturers, many of them have not even put up service of more than six-seven years. To avoid hardship to individual Lecturer and simultaneously with a view to continue the harmony in the department of each subject in the government colleges, and the fact that some of them are imparting education to Post Graduate (PG for short) students on acquisition of qualifications prescribed for PG Teachers, this Court whether should direct the State Government to regularise the services of ad hoc Lecturers, is also one of the shed of issue raised before the Court. In case of Meera Massey (supra), the Apex Court has made it clear that " this approval of their continuing on the post of Lecturers in view of their working for such a long period should not be treated as precedent. This had been done on the facts and circumstances of this case." In this judgment, we want to make it clear, especially University while making appointment of Lecturer should not create a situation so that they have to condone their own illegality by regularisation." So, the decision in the case of Meera Massey (supra), is the decision of exercise of powers of the Apex Court and the same is nothing but showing a mercy. It does not lay down any law, but says about exercise of extra-ordinary powers in relation to a particular set of facts.

54. Doctrine of tempering justice with mercy has been dealt with by the Apex Court in more than decisions, but for the purpose, it would be appropriate to refer only one decision of the Apex Court in the case of Ashwani Kuamr & Others v/s State of Bihar & Others, reported in

(1997) 2 SCC P.1 wherein recruitment of Class III & IV servants were at stake and question of regularisation of their services was under consideration by the Apex Court. Apex Court, considering the set of facts, has observed that:-

" Once the source of their recruitment is found to be tainted all of them have to go by the board. Nor can one say that benefit can be made available only to 1363 appellants before the Supreme Court as the other employees circumscribed and who might not have approached the High Court or the Supreme Court earlier and who may be waiting in the wings would also be entitled to claim similar relief against the State which has to give equal treatment to all of them otherwise it would be held guilty of discriminatory treatment which could not be countenanced under Articles 14 and 16(1) of the Constitution of India. Everything, therefore, must start on a clean state. Reliance placed by the appellants on the doctrine of tempering justice with mercy also has to be based on justice."

55. Appointment of Lecturers in government colleges are subject to statutory rules framed under Article 309 of the Constitution. Undisputedly, all these posts are within the purview of Public Service Commission. Till the date of publication of advertisement for recruitment referred to herein above, State Government had never tried for concurrence and regularisation of Lecturers appointed on ad hoc basis. So, the question of accepting such request or rejection had not arisen. Some of the decisions cited including the decision in the case of J & K Public Service Commission (Supra), deal with the cases where request to accord concurrence and regularization of services either were wrongly or were erroneously accepted. In the case of Mr. Santosh Kumar Verma & Ors. v/s State of Bihar, through Secretary, Department of Urban Development, Govt. of Bihar, New Secretariate, Patna & Ors.,reported in JT 1997 (2) SCC P.97, the Apex Court has considered this aspect. Section 6(3) of Bihar Regional Development Authority Act, 1981 empowers the authority to appoint Secretary and other officers and employees of the authority. Appointing Authority had powers to appoint any person for the period not exceeding six months on the post carrying minium salary of Rs. 500/ and above, after approval of the State Government. There were no statutory rules for the mode of

recruitment. At the time of publication of advertisement for recruitment, it was not indicated that these posts were temporary posts. So, selectees ultimately claimed regularisation of their salary. While appreciating the scheme of Section 6(3) of the said Act, the Apex Court observed that :-

" The power under the proviso is only a breathing elbow power given to the Authority to make temporary appointments so that the work of the Development Authority goes on pending recruitment. Therefore, when the advertisement was made for the recruitment, it was obviously in furtherance of the power flown under the proviso for a limited period. Thereby, the appointments obviously are only temporary appointments. The appellants realising the limited temporary tenure of the appointments had sought assistance of the Government for regularisation which was negatived by the Public Service Commission. It is seen that these posts are within the purview of the Public Service Commission. Therefore, the Government sought the concurrence of the Public Service Commission and the Public Service Commission had not concurred and, in our view, correctly with the request made by the Government. Therefore, any regularisation in violation of the recruitment to be made by the Public Service Commission is in contravention of the law."

Upholding the decision of the High Court, the Apex Court has said that regularisation of service made in contravention of rules to violate and no mandamus or directions can be issued and such directions would violate the law.

55. So, this Court has considered the scheme of 1967 Rules framed under Article 309 of the Constitution of India and especially Rule NO.16 while dealing with the case of Mr.D.D. Upadhyaya (supra). Relevant discussion in paras 9 & 10 of the decision which is not disturbed by the Division Bench so far. Similar type ofissue has been considered by the LPA Bench of this Court while dealing with LPA No. 344/2000 (in SCA No. 3308/90) and reasoning adopted by the ld. Single Judge has been upheld. So, even for the sake of arguments it is accepted that the appointments of Lecturers by the government through local committees can be said to be an appointment made as provided under Rule 16 of 1967 Rules, the same would not strengthen the case of ad hoc appointees for regularisation or concurrence by GPSC.

56. Some of the ad hoc Lecturers who had approached this Court either for regularisation or against their formal termination of services, had never successfully pleaded the case that respondent State should be directed to send their cases for concurrence or regularisation to GPSC so that they can be regularised, nor the State itself had ever tried for the same. On the contrary, the act of sending requisition for more than 430 vacancies in various subjects clearly indicates that State had decided to get the appointment done through GPSC as contemplated under the Recruitment Rules. As referred earlier, some of the Lecturers did appear in the competitive test. Some of them are selected also. The question is whether this Court would ever be justified in issuing directions to consider the case of ad hoc Lecturers de novo and can issue directions to the effect that case of each individual with all relevant service record be sent to GPSC and State should seek concurrence and in turn regularisation. The answer to this question is obviously in negative as submitted by ld. Advocate General Mr. Shelat that such directions neither would be legal nor would be justified. The goal of this Court should be that substantive justice should and has to be done, but as submitted, it should not result into tempering justice with mercy or sympathy.

57. When this Court was dealing with Spl.C.A. No. 11266/94 (group matters), similar arguments were advanced by the Lecturers appointed in the subject of "Applied Machines" on ad hoc basis. This decision in the case of (Ashok Babulal Patel (supra) is reported in 1996(2) GLR P.535), it is held that if a person is appointed on ad hoc basis on a condition that his or her services would be till a candidate selected by the GPSC is available, such a person can not claim right to continue in service when a candidate selected by the GPSC is available for appointment. Referring to the decision of N.M. Bhagwandas v/s State of Gujarat & Ors., reported in 1990(1) GLH 494, it has been observed that in such cases, there is no scope for applying the principle of "last-cum-first go" or "first-cum-last go". It has been held in para-9 that:-

> "It is well settled that employees who have been appointed on ad hoc basis on condition that their services would be continued till duly selected candidates are available by G.P.S.C. have no right to continue in service when duly selected candidates by G.P.S.C. are available to fill in the posts (See M.M. Bhagwandas v. State of

Gujarat & Ors., 1990(1) GLH 494). For all the 36 posts, candidates who have been duly selected by he G.P.S.C. are available, and therefore, there is no scope for applying principles of last come first go or first come last go. For the foregoing reasons, none of the petitioners is entitled to any of the reliefs on the footing that principle of last come first go is applicable, to the facts of the present case."

The decision in the case of Patel Ashok Babulal (Supra), was under scrutiny of the Division Bench and this Court (Coram : B.N. Kirpal,CJ & H.L.Gokhale,J) in the decision reported in 1993(3) GCD 645 (Guj), confirming the aforesaid decision, has held that :-

"Ordinarily, the principle of "Last Come, First Go" would apply in cases of retrenchment. That is the basic principle of labour law. Where, however, in cases like the present, when Lecturers had been appointed pending regular selection and it is stated in the letter of appointment that if regularly selected candidates are not available, then the appointment will be only for a fixed period of 11 months, it will not be appropriate or legal for a Court to disregard the specific terms of the letter of appointment and allow a Lecturer to continue to remain in office. If the initial order of appointment, restricting the appointment for a period of 11 months is valid, and we have no doubt in our mind that it is so, then the Court cannot, at a later point of time, disregard the terms of appointment and allow a candidate to continue. This is precisely what the appellants want the Court to do but which is not permissible. At the risk of repetition, it is observed that it is open to an employer to make an ad hoc arrangement, by stating that the appointment will be till a regularly selected candidate is available or for a period of 11 months, whichever is earlier. Such a term in the order appointment of an ad hoc employee, who is not selected by the G.P.S.C., which is required by the Rules, would be a valid clause and if this is so, it is not open to the selected candidate to contend that the Court should disregard the period of appointment for which he was appointed and to give a direction which would, in effect, allow him to continue to

remain in office. This is more so in a case, like the present one where the appellants belong to a general category and are occupying posts or claim to occupy posts, which are meant for a reserved category."

However, considering the set of facts in the cited case, direction has been issued to the effect that there shall not be termination of services of the candidates whose names are included in the list forwarded by the GPSC.

58. In the case of Ashokkumar & Others v/s Chairman, Banking Service Recruitment Board & Others, reported in (1996) 1 SCC 283, the Apex Court has held that Article 14 read with Article 16(1) of the Constitution enshrines fundamental right to every citizen to claim consideration for appointment to a post under the State. Therefore, vacant posts arising or expected should be notified inviting applications from all eligible candidates to be considered for their selection in accordance with their merits. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution. The appointment, therefore, of the candidates kept on waiting list though the vacancies had arisen subsequently without being notified for recruitment, is unconstitutional. Of course, the Apex Court had not disturbed the appointments already made. This decision has been cited by the ld. counsel appearing for the GPSC and has submitted that the State or GPSC should not be directed to keep any of the Lecturers from any group-set of Lecturers on waiting list against the expected vacancies either anticipating reduction of workload of the college teachers or potential vacancies.

59. In the case of State of Maharashtra v/s Badriprasad Pandey & Ors., reported in 1974 All India Services Law Journal P.187, wherein validity of the order of reversion passed was challenged by writ petition under Article 226 of the Constitution of India in reference to Articles 14, 16 & 311 of the Constitution of India. In the cited case, conditions regarding qualification was changed and the Court on facts held that Rule-9 applied in the case of original petitioner and on the date of order under challenge, he was holding the post in permanent capacity and had a right to hold that post and, therefore, his reduction in rank is void as the same does not conform to the constitutional requirement of Article

311 of the Constitution. This decision would not help the ad hoc Lecturers because undisputedly, they were neither recruited under the statutory rules for recruitment of government college teachers nor holding any post in permanent capacity. On the contrary, their appointments were subject to availability of GPSC selected candidates.

60. In the case of M/s Pooja Sood v/s D.A.V. College Managing Committee, Hoshiarpur and others , reported in 1992(4) SLR P.222, ld. Single Judge of Punjab & Haryana High Court has held that termination of appointment of the petitioner was illegal and she is entitled to the protection under Article 311 of the Constitution of India. In the cited case, the petitioner Ms. Pooja Sood was initially appointed as Lecturer against the leave vacancy. She continued on the post for four years. At one point of time, she was appointed "permanent on probation" by the college. Punjab University, Chandigarh had approved the appointment of the petitioner as Lecturer in English. She was appointed on 12.8.1986 and undisputedly, she fulfilled qualifications prescribed for the post at that time. She came to be terminated only on account of one letter dated 4.4.1990 written by the Director, Public Instructions (College), Punjab, observing that Ms. Pooja Sood does not fulfil requisite qualification. Ld. Counsel appearing for the ad hoc Lecturers states that subsequent change in the requisite qualification for the post of Lecturer by University Grants Commission (UGC for short) would not come in the way and all ad hoc Lecturers could have been offered an opportunity to appear before the GPSC in response to the advertisement issued by the GPSC. Respondent government ought to have issued instructions to GPSC at the time of sending requisition for recruitment that requisite qualification as to the age and education should be relaxed in the case of Lecturers who are working as Lecturers in the Govt. Colleges. Ld. Advocate General, as referred earlier, has shown strong resistance so far as relaxation of educational qualification is concerned stating that the Government is not authorised to relax this criteria fixed by UGC. This decision of Punjab & Haryana High Court has a persuasive value only.

60. Decision of the Andhra Pradesh High Court in the case of J.J. Murlidhara Rao v/s State of Andhra Pradesh & Ors., reported in 1971(1) SLR P.523, also deals with a case where appointment of Lecturer in Maths, in the department of technical education, was made. The petitioner was possessing requisite qualification prescribed for the post. After 10 years, New Rules came

into force and as per new norms, the petitioner was not possessing necessary qualification prescribed under the New Rules. The question raised before the Court was that the government whether can discontinue the services of the petitioner treating him as temporary as he was appointed temporarily. In the cited case, the petitioner had sought for two main reliefs and one of the relief was that appropriate directions to the respondent be issued to take action to relax the rule relating to the age and educational qualification prescribed in special rules relating to technical education services. After evaluating the facts carefully and considering Rule 10 of Andhra Pradesh General Service Rules, the Court directed the government by a writ of mandamus to treat the petitioner as regularly appointed Lecturer from 1959. In the case before the Andhra Pradesh High Court, there were no rules framed under Article 309 of the Constitution in force having effect from 14.1.1964. Therefore, the recruitment of the petitioner can be said to have been made under Andhra Pradesh General Service Rules. In the present case, undisputedly, rule for recruitment of Lecturer in government colleges framed under Article 309 of the Constitution of India were well in existence and despite of these rules, all the ad hoc Lecturers are appointed temporarily for a specific period and on the condition that their services are subject to the availability of regularly selected candidates by GPSC. So, this decision of the Andhra Pradesh High Court also would not help the ad hoc appointees.

61. Decision in the case of State of Haryana & Ors. v/s Piara Singh & Others, reported in (1992)4 SCC 118, is the case relating to Class:III employees and their regularisation in service who were appointed on ad hoc and temporary basis as government employees. The Apex Court allowing the appeal filed by the State of Haryana, has decided to issue only one direction contained in the said judgment and State of Haryana was directed to consider the feasibility of regularisation having regard to the particular circumstances with a positive approach and an empathy for the concerned person. It is also observed by the Apex Court in para-46 of the said judgment that ad hoc-temporary employees should not be replaced by another ad hoc-temporary employee. The ratio of the aforesaid decision indicates that ad hoc employee has to be replaced only by a regularly selected employee and not by another ad hoc employee. Even it is held to the effect that the appointment of ad hoc Lecturers in the present case, does not amount to a total "back door entry" in the service, the recruitment shall remain an appointment irregular, being made by Local Committee or

by the Education Department and not through regular selection procedure, under the so-called administrative exigencies, and not as per the statutory recruitment rules. Undisputedly, the posts are civil posts and bound to be filled in as per the rules framed under Article 309 of the Constitution of India through a constitutional functionary viz. through Public Service Commission. Merely because 1967 Rules are also framed under Article 309 of the Constitution of India, would not change the status of ad hoc employestemporary government employees. So, issuance of directions to regularise the services of the ad hoc Lecturers would not be legal. On the contrary, decision in the case of Piara Singh (Supra), if considered, then it would not be even justified for this Court to ask the respondent State that GPSC Selectees should be treated as candidates on the waiting list or ad hoc Lecturers who are to be replaced by GPSC selectees, should be treated as Lecturers appointed on regular posts, because the Court must while issuing directions, should act with utmost care and caution. The Court must first ascertain all relevant aspects and should think of several situations and eventualities that may arise on account of issuance of such directions. In all cases, pragmatic or practical approach is not possible. Creation or abolition of a post is a prerogative of the Executive and the Court should not be enthusiastic in imposing avoidable financial burden on public exchequer. Substantive petition is filed by the GPSC selected and recommended candidates and it would not be either legal or justified to say that their appointment should be made by increasing cadre strength. Therefore, the Apex Court in the above-cited decision, has issued only one direction.

62. In the decision in the case of All Manipur Regular posts.....case (supra), the Apex Court has issued certain directions only with a view to avoid further litigation and also to avoid seemingly conflicting interest orders passed by the High Court. The Apex Court was concerned with more than 1000 teachers who were recruited from the year 1981-82 and these teachers were allowed to appear before the authority approved under the rules for direct recruitment. But because of prohibitory orders of the High Court, they could not be appointed regularly. Therefore only, the Apex Court interfered and exercised the powers under Article 32 of the Constitution. But, I am afraid, such or similar powers cannot be exercised by this Court under Article 226 of the Constitution of India. By this decision, the Apex Court has also ordered to govern all the pending litigations before the High Court or before any other

forum. It is also pertinent to note that undisputedly all substantive ad hoc teachers were having requisite qualification on the date of initial appointment and, therefore, they were ordered to be regularised without any formal interview by the recruiting authority. In the present case, the change in requisite qualification for appointment as a Lecturer can be taken care of by making suitable observations which can legitimately made by the Court in view of Article 16 & 226 of the Constitution of India.

63. After considering the decision in the case of Dr. A.K. Jain (Supra), the Apex Court in the case of Dr. M.A. Haque & Others v/s Union of India & Others, reported in (1993) 2 SCC 213, has observed in para-9 of the decision that :-

" We are conscious of the fact that the petitioner-applicants have been serving the Railways from the year 1968. It is also possible, as contended on their behalf that many of the outside direct recruits have joined the service long after 1968 and some of them might have even taken initial instructions from the petitioners applicants. We are also conscious of the fact that candidates in service have a disadvantage as against the fresh candidates in the tests particularly when they face the tests after a long lapse of time. As against this, however, we cannot lose sight of the fact that the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and by-passing of the Public Service Commissions are permitted, it will open a back-door for illegal recruitment without limit. In fact this Court has, of late, been witnessing a constant violation of the recruitment rules and a scant respect for the constitutional provisions requiring recruitment to the services through the Public Service Commission. It appears that since this Court has in some cases permitted regularisation of the irregularly recruited employees, some Governments and authorities have been increasingly resorting to irregular recruitments.The result has been that the recruitment rules and the Public Service Commissions have been kept in cold storage and candidates dictated by various considerations are being recruited as a matter of course."

In this very decision, the Apex Court has also further observed that the Apex Court has adopted the course of issuing directions for creation of supernumerary posts at a very higher promotional stage. (Emphasis supplied). But creation of supernumerary post has its own limitations both physical and financial. In the present case, the strength of ad hoc Lecturers working in the government colleges if considered on both the counts viz. physically as well as financially, it would not be justified for this Court to ask the government to treat any ad hoc Lecturer in the cadre of Lecturer by creating supernumerary post. These posts cannot be said to be very highly promotional posts.

63. Decision of the Apex Court in the case of Ahmedabad Municipal Corporation (supra), the Apex Court has observed that the decision of the Tribunal issuing directions to the Ahmedabad Municipal Corporation to absorb respondents in the permanent cadre was neither legal nor proper. The Apex Court has made relevant observations in para-5 of the judgment reproduced herein above in this judgment. This decision squarely helps the case of the GPSC selected candidates, as the ratio is against grant of mechanical regularisation or absorption.

64. In case of Inspector General of Registration, U.P. & Another v/s Avdesh Kumar & Others, reported in 1996 SCC (L & S) 1222, the Apex Court has propounded the principle that the date of appointment of a daily wager is relevant. In the cited case, it was represented before the Apex Court that some of the candidates have become over-aged. Employees who were working on daily wages or who had worked on daily wage had become over-aged when recruitment procedure had started or on the date of selection, and therefore, the selection committee was asked to suitably relax the age and then consider their cases along with all eligible candidates. It was further directed that in case the candidate is to be selected on merits according to the rules in the light of the directions, he/she should be appointed. This decision can help only to those who intend to compete with open general category candidates as and when called for interview by the GPSC.

65. In the case of State of Orissa & Another v/s Dr. Pyari Mohan Misra, reported in AIR 1995 SC 974, the Apex Court has observed that ad hoc services even if prolonged and continuous, does not ripen into regular service to claim the permanent or substantive status. Rejecting the plea of the petitioner, the Apex Court held that;

" he would remain totally on ad hoc basis till further orders since the government had taken policy decision to appoint as an I.A.S., he was rightly reverted to the post of Joint Director. Accordingly, we hold that his reversion is perfectly legal and valid. However, the stark facts remain that he continued in the post of Director and discharged his duties as Director from August 12,1971. In these circumstances, as a mark of good gesture but not as a precedent, the appellants are directed to give him pensionary benefits computing his pay as if he voluntarily retired as a Director from December 16, 1977. All the proceedings now stand concluded."

This decision of the Apex Court cannot be cited as a precedent of law and the basic ratio of this decision is that there cannot be regularisation of service of an ad hoc appointee as prolonged and continuous officiation does not give rise to claim permanent status. It would not be correct to say that on the strength of this decision, this Court can direct the State Government to regularise the services of ad hoc Lecturers or direct the State Government to recommend the cases of Lecturers for regularisation to GPSC in respect of those Lecturers serving on ad hoc basis since more than five years or suggest any other modality for regularisation. At one point of time, it was submitted that this Court atleast should consider the case of ad hoc Lecturers who have crossed the age limit and/or have lost their seniority and other benefits in the original cadre where they were serving as teachers etc. The submission that they havae misused opportunity to get a regular appointment in private colleges also would not help them. They could have done so instead continuing with lifeline i.e. interim relief granted by the Court.

66. In the case of Ratanlal and others v/s State of Haryana & others, reported in AIR 1987 SC 478, the Apex Court was dealing with the common question as to whether it is open for the State Government to appoint teachers on ad hoc basis at the commencement of an academic year and termination of their services before the commencement of next summer vacation, or earlier, to appoint them again on ad hoc basis at the commencement of next academic year and to terminate their services before the commencement of the succeeding summer vacation or earlier and to continue to do so year after year. Considering the typical set of facts, the Apex Court had directed the

State of Haryana to take immediate steps to fill up the posts in accordance with relevant rules in which teachers appointed on an ad ad hoc basis were working and to allow all those teachers who were holding the posts on ad hoc basis to remain in those posts till the vacancies are dully filled up. The Apex Court also directed the State Government to consider sympathetically the question of relaxing qualification of maximum age prescribed for appointment to those posts in case of those who have been victim of this system of ad hoc appointment. (Emphasis supplied). The Apex Court further directed the State of Haryana that " if any of the teachers appointed on ad hoc basis has under any existing rules acquired the right to be treated as regularly appointed teachers, his case should be considered by the State Government and the appropriate orders may be passed in such cases." So far as ad hoc Lecturers in government colleges are concerned, it is not the case that they have acquired right to be treated as regularly appointed teachers. State of Gujarat, in the present case, has started procedure to recruit and appoint Lecturer in government colleges according to the recruitment rules. This act itself indicates that the State does not intend to continue the practice of ad hoc appointment to avoid increase in number of victims in this system. Sympathy shown by the Apex Court in the above-cited case is to protect the victims of the system of ad hoc appointment viz. to the Teachers appointed on ad hoc basis who have crossed the maximum age prescribed for appointment and the teachers who had acquired right to be treated as regularly appointed teachers, according to the existing rules, otherwise ratio of the decision indicates that all other ad hoc teachers were continued in service subject to their recruitment in accordance with recruitment rules. Ratio of this decision and the decision in the case of Vinod Shankar Tripathi (supra) can be considered in reference to the submissions advanced by the ld. Advocate General referred to herein above in para-25 .

67. In the case of Jatinder Kumar & Others v/s State of Punjab & Others, reported in AIR 1984 SC 1850, the Apex Court has held that the provisions of Article 320 are directory. The persons selected by Public Service Commission has no right to be appointed and no mandamus would lie. Both the rival groups of Lecturers have placed reliance on this decision. Ld. Senior counsel appearing for the ad hoc Lecturers have submitted that the petitions filed by GPSC selected candidates can be dismissed accepting and appllying the ratio of this decision. But observations made in para-12 of the decision ultimately help the GPSC selectees because it is

on record now that the advertisement was issued against the available vacant posts and not against the anticipated vacancies. It is open for the government to decide how many appointments shall be made, but when State has admitted that selection and/or recommendations by GPSC is against the clear vacancies available in each subject and on the contrary, there is scope to continue some ad hoc Lecturers till the GPSC further recommends names of the selected candidates, then this Court can positively ask the State Government to take immediate appropriate steps to appoint candidates who are recommended by GPSC, otherwise there is no use of asking an independent body like Public Service Commission to undertake such exercise as the same is established to ensure the selection of best available persons for the appointment on the post to avoid arbitrariness and nepotism in the mode of appointment. Some adverse comments were also made during the course of oral submissions as to the methodology adopted by the Public Service Commission, but no formal discussion is warranted. The selection procedure followed by the GPSC has not been challenged even indirectly before this Court. On the contrary, some of the Lecturers serving on ad hoc basis have appeared in the interview conducted by the GPSC and many of them have successfully cleared the same.

68. In the case of Karnataka State Private Colleges Stop-Gap Lecturers Association v/s State of Karnataka & Others, reported in AIR 1992 SC 677, the Apex Court has issued certain directions in connection with the regularisation of services. Undisputedly, teachers were serving in private colleges by way of stop-gap arrangements with break of a day or two every three months. Before issuing directions, in para-2 of the aforesaid decision, the Apex Court has said:

> "Ad hoc appointments, a convenient way of entry usually from back-door, at times even in disregard of rules and regulations, are comparatively recent innovations to the service jurisprudence. They are individual problem to begin with, become a family problem with passage of time and end with human problem in court of law. It is unjust and unfair to those who are lesser fortunate in society with little or no approach even though better qualified, more meritorious and well deserving. The infection is widespread in Government or semi-Government departments or State financed institutions. It arises either because the appointing authority

> resorts to it deliberately as a favour or to accommodate someone or for any extraneous reason ignoring the regular procedure provided for recruitment as a pretext under emergency measure or to avoid loss of work etc. Or the rules or circulars issued by the department itself empower the authority to do so as a stop-gap arrangement. The former is an abuse of power. It is unpardonable. Even if it is found to have been resorted to as a genuine emergency measure the courts should be reluctant to grant indulgence. Letter gives rise to equities which have bothered courts every now and then. Malady appears to be widespread in educational institutions as provisions for temporary or ad hoc appointments have been exploited by the managements of private aided colleges to their advantage by filling it, on one hand, with persons of own choice, at times without following the procedure, and keeping the teachers exposed to threat of termination, on the other, with all evil consequences flowing out of it. Any institution run by State fund but managed privately is bound to suffer from such inherent drawbacks. In State of Karnataka it is basically State created problem due to defective rule and absence of any provision to effectively deal with such a situation."

The first direction issued by the Apex Court is that service of such temporary teachers who have worked as such for three years, including the break till today shall not be terminated. They shall be absorbed as and when regular vacancies arise. The other direction deals with other relevant contingencies and the Apex Court directed the State Government to create additional posts if the regular selection has been made so that selected candidates can be accommodated in the cadre . The powers exercised by the Apex Court are under Article 32 of the Constitution of India. This Court has no jurisdiction to issue such mandamus or similar directions. In more than one decisions, the Apex Court has said that the Court should go very slow in issuing such or similar directions by which financial burden or policy of the State may be affected.

69. In a recent decision of the Apex Court in the case of S. Renuka & Others v/s State of Andhra Pradesh & another, reported in 2002 AIR SC Weekly 1406, the Apex Court, after referring to the decisions of Keshav Chandra Joshi v/s Union of India, AIR 1991 SC 284 & J.K.Public Service Commission's case (supra), has held that

selection or recruitment against rules and against the reservation policy should not be accepted and a candidate selected against rules has no right to the appointment. The Apex Court while refusing to issue directions to the State Government to appoint the petitioners, has observed that " if such directions were to be given, this Court would be creating ex-cadre posts and making appointments contrary to rules." In the said case, posts of Mahila Court were lying vacant for a long period. Even then the Apex Court held that it is not possible for this Court to acede to the request of the ld. counsel appearing for the petitioners. The Apex Court was dealing with the administrative decision taken in the meeting of the Full Court of Andhra Pradesh High Court in response to the query raised by the State Government. The relevant rules 2 & 6 of Special Rules for Andhra Pradesh State Higher Judicial Service framed under Article 309 of the Constitution of India was under consideration. It would not be legally possible for this Court to issue directions to create ex-cadre post to continue ad hoc Lecturers on sympathy while exercising jurisdiction under Article 226 of the Constitution.

70. To suggest any cut off date or to divide the Lecturers serving on ad hoc basis in two groups viz. (i) ad hoc Lecturers who have completed five years service on the date of publication of advertisement for recruitment by GPSC, and (ii) rest of the Lecturers who have not completed five years on such date, would not be just and proper because such division, with a view to give a direction to regularise the Lecturers who have completed five years service, also would amount to create ex-cadre posts. Some of them might have continued in service on account of prohibitory orders issued by this Court or by Civil Court. Not only that, such regularisation would be against the accepted proposition of law. This may also provide indirect encouragement in continuing unhealthy practice deprecated by this Court as well as by the Apex Court on number of occasions.

71. In the case of Commissioner, Assam State Housing & Another v/s Purna Chandra Bora & Another, reported in (1998)6 SCC 619, the Apex Court has held that temporary appointee cannot challenge the regular appointments to benefit himself. In this case, respondent no.1 Purna Chandra Bora had challenged the selection and appointment of five persons who were appointed temporarily subject to discharge. Respondent no.1 Purna Chandra was temporarily appointed as Accounts Assistant by the Commissioner and appointment order stated that he would serve "till appointment of Accounts Assistant on regular basis".

After that, respondent No.1 Purna Chandra came to be discharged from the services on the date on which five persons were appointed after selection. He tried to challenge the selection of those five persons on the ground that no written test was held nor it was necessary in these proceedings for the High Court to look at the order-sheet of the selection. Five persons were on probation when appointed, but that did not mean that they were not appointed on regular basis. Reversing the decision of the High Court, the Apex Court allowed the appeal and dismissed the writ petition filed by the temporarily appointed respondent no.1 Purna Chandra. In the present case, all ad hoc Lecturers are appointed subject to the availability of regularly selected candidates from GPSC. They cannot resist the appointment of the candidates who are selected and recommended by the GPSC. Undisputedly, many of the ad hoc Lecturers who have approached the Court have failed in getting their services regularised. Some such writ petitions filed under Article 226 of the Constitution have been dismissed. Ld. Advocate General Mr. Shelat has stated number of such petitions which have been dismissed by this Court by speaking orders. Some of them were permitted to withdraw withdraw the petition, but the effect would be the same. Some petitions as well as civil proceedings, as submitted, being pending ad hoc Lecturers are enjoying services on the strength of interim relief granted by the Courts in respective proceedings. Such ad hoc Lecturers cannot resist the appointment of regularly selected candidates for that reason viz. for their benefit.

72. In the case of D.D. Upadhyaya (supra), this Court was dealing with the case of regularisation of the Assistants working in the Legal Department, Sachivalaya, Gandhinagar, all similar and relevant aspects have been considered by the Court at length. In reference to Articles 14 & 16 and Article 309 of the Constitution of India and Gujarat Civil Services (Classification of Recruitment) Rules, 1967, the Court held that "appointments found to the contrary to the statutory rules are void and, there cannot be regularisation of such appointments. There is no room for sympathy and equity. This Court, while dealing with various issues raised and considered the decisions in the case of (i) J & K Public Service Commssion's case (supra), (ii) Dr. Surinder Singh Jamwal (supra), and (iii) Union of India v/s Mahendra Singh & Ors., (1997)10 SCC 245. As stated earlier, decision of the ld. Single Judge has not been disturbed by the Division Bench so far. Therefore, the ratio has binding effect and present appointees on ad hoc

basis cannot resist the substitution made by the candidates selected by the GPSC.

The ambit and reach of Articles 14 & 16 of the Constitution of India are not limited where public servant effected has a right to the post. Even if a public servant is in a officiating position and ad hoc appointee, can complain of violation of Articles 14 & 16 of the Constitution of India, but it is obligatory to establish that the act of termination of service is arbitrary or unfair or the person aggrieved is subjected to the malafide exercise of powers by the State mechanism. In the present case, there is a scope to observe to the effect that no ad hoc appointees should be terminated or relieved unless the GPSC selected and recommended selectee is made available in the particular subject and for this purpose the date of entry in the subject department in a particular subject may be considered as relevant date.

However, in the present case, ld. Advocate General has fairly submitted that after appointing GPSC selected candidates in each subject, if Government finds that there is a scope to continue ad hoc appointees or to continue ad hoc appointees on the available vacancies, then State is ready to continue such ad hoc appointees till regularly selected candidates are made available. So, in that situation, the State can be directed to follow the principle of "last cum first go" on the broad principle of equity.

73. While dealing with group of writ petitions filed by the ad hoc Lecturers (7 Spl.Civil Applications), this Court (Coram: S.K.Keshote,J) has made several observations in the oral judgment dated 12.5.1999. State administration has been amply critisized and nabbed by this Court and most of the States of the country have received severe critisism from respective High Courts and the Apex Court in giving ad hoc appointments on the post which has to be filled through PSC. Some of the observations are already referred to in this judgment in quoted paragraphs. So, I do not see any necessity to offer fresh critisism to the State Government in some other words for appointing and continuing ad hoc Lecturers for several years and for initiating procedure for recruitment as per constitutional mandate contained in Article 320 of the Constitution at a very belated stage i.e. after several years in the year 1998. Over and above the recruitment made by the Education Department, many Engineers and Medical Officers have also been recruited by various departments on ad hoc basis on

the posts which are within the purview of PSC. The Court is in agreement with the ad hoc Lecturers working and serving the State machinery especially the Education Department, to some extent that they are victims of the situation, but it is also important to note that none of them had approached this Court for issuance of appropriate writ in their initial years/months of appointments so that State machinery could have been compelled to initiate recruitment as per the constitutional mandate through GPSC. None of the counsel has pointed out that such petitions were filed and were taken to its logical end. On the contrary, it transpires that most of the ad hoc Lecturers who have approached the Court have tried to continue on the strength of interim relief granted by the Courts.Not only that, some have felt satisfied with the orders passed by this Court that they shall serve only till GPSC selected candidates are made available to serve in the government colleges. When this Court disposed of all these seven petitions with only observation/direction that the State of Gujarat through Secretary of Education Department is restrained from making appointment either on ad hoc or temporary basis or for a fixed term without first taking prior permission of this Court. All the appointments are to be made on the posts of Lecturers only by a selection through GPSC. Of course, this direction is subject to one qualification mentioned in the order. On the date of order, the State of Gujarat and GPSC had already taken steps to fill up the vacancies by recruitting the candidates through the PSC. So, in the interest of justice, all Special Civil Applications were disposed of in terms that interim relief which was granted by the Court, shall continue till GPSC finalises the selection of candidates and recommends on the strength of which appointments could be made. This verdict has an important effect on all relevant points argued before this Court. As observed by this Court while dealing with Spl.C.A. No. 3308/90 (decided on 10.2.2000) that irregular appointment cannot be continued and appointment of ad hoc Lecturers are irregular appointments as the same are not in accordance with statutory recruitment rules. Ratio of the decision of the Apex Court in the case of Dr. Arundhati Ajit Pargaonkar (supra) is in favour of the candidates selected by the GPSC. In the same way, decisions in the case of Narinder Mohan (Supra) and Dr. Surinder Singh Jamwal (supra) the points decided by the Apex Court clinch the present issues and it is not legally possible for the Court to ask the State Government to ignore the recommendations made by the GPSC and to think about regularisation of services of ad hoc Lecturers as referred in the first affidavit dated

14.6.2001 filed by the State. So-called policy decision reflected in the first affidavit is contrary to the constitutional obligations of the State. As J & K Public Service Commission had approached the Apex Court in the case of Dr. Narinder Mohan (supra), GPSC also could have approached this Court against challenging the constitutional validity and propriety of the government decision taken for or towards regularising ad hoc appointees. The first affidavit does not give details about how the State would ask the GPSC to give concurrence and if such concurrence is not accorded, then in that case,what would happen to the decision taken by the State Government. Of course, the State Government was under obligation to consider the request if made by the ad hoc Lecturers either in group or in an individual capacity. The State Government referring the constitutional obligations under Articls 14, 16 & 320 of the Constitution and the fact that the State Government has decided to send requisition to initiate procedure for recruitment and to recommend the names of the selectees, could have negatived the request in the reply against the representation so made. The State officials, including the Minister of concerned department, are supposed to carry out the commands having sanctity of law. Ignorance on this aspect would not give rise to any right in favour of any person. The Apex Court has observed in the decision in the case of Tarlochan Dev Sharma v/s State of Punjab & Others, AIR 2001 SC 2524 that senior officers are not supposed to mortgage their own discretion, volition and decision making authority to politicians for carrying out commands having no sanctity in law. So, any so-called promise or undertaking given by the State against its statutory obligation and in violation for sanctity in law, would not create any legal liability of the State nor would give rise to any right or cause. Principle of promissory estoppel would not be attracted at all against the State. Verdict of the Apex Court on this point in the above-cited case is reflected in para-15 which says:-

"In the system of Indian Democratic Governance as contemplated by the Constitution senior officers occupying key positions such as Secretaries are not supposed to mortgage there own discretion, volition and decision making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The Conduct Rules of Central Government Services command the civil servants to maintain at all

> times absolute integrity and devotion to duty and do nothing which is unbecoming of a Government servant. No Government servant shall in the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior. In Anirudhsinhji Jadeja (1995) 5 SCC 302: (1995 AIR SCW 3543: AIR 1995 SC 2390), this Court has held that a statutory authority vested with jurisdiction must exercise it according to its own discretion; discretion exercised under the discretion or instruction of some higher authority is failure to exercise discretion altogether. Observations of this Court in the Purtaabpur Company Ltd., AIR 1970 SC 1896, are instructive and apposite. Executive officers may in exercise of their statutory discretions take into account considerations of public policy and in some context policy of Minister or the Government as a whole when it is a relevant factor in weighing the policy but they are not absolved from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for instructions by a superior to bind them. As already stated we are not recording, for want of adequate material, any positive finding that the impugned order was passed at the behest of or dictated by someone else than its author. Yet we have no hesitation in holding that the impugned order betrays utter non-application of mind to the facts of the case and the relevant law. The manner in which the power under S. 22 has been exercised by the competent authority is suggestive of betrayal of the confidence which the State Government reposed in the Principal Secretary in conferring upon him the exercise of drastic power like removal of President of a Municipality under S. 22 of the act. To say the least what has been done is not what is expected to be done by a senior official like the Principal Secretary of a wing of the State Government. We leave at that and say no more on this issue. "

So, arguments based on the strength of first affidavit dated 14.6.2002 cannot be accepted. The second affidavit dated 30.8.2001 is nearer to accepted and settled proposition of law. It would not be legal to say that selection by Local Committee being selection under

1967 Rules, should be held to be regular appointment when statutory rules for recruitment of Lecturers in Government colleges were very well in existence and the appointments made by the State machinery was for a limited period and subject to the availability of GPSC selected candidates. Merely because the Lecturers appointed on ad hoc basis were possessing requisite educational qualification and all relevant aspects i.e. reservation policy, age criteria etc. were considered by the recruitment committee, would not make the appointment regular and in compliance with the statutory rules. It can be said that some parallel mechanism or short-cut was carved out for the reasons best known to the State Government for all these years and because of the severe critisism by the Courts, the State was compelled to initiate recruitment procedure as per the constitutional mandate.

74. The decision of the Apex Court in the case of Vidhadhar Sharma v/s G.B. Patnayak & Others, 2001 AIR SC Weekly 2464, would be of help to some ad hoc appointees serving since years. Some findings in this decision also may help them in continuing services if GPSC selected candidates are not available and if there are vacancies in a particular subject, otherwise this would not help the Lecturers presently serving on the ad hoc basis. Other arguments advanced by the ld. Senior Counsel M/s. Yation Oza, Harubhai Mehta and Bhaskar Tanna whereby they have mentioned pointing out number of points of hardships with illustrations, stating that even senior teacher or government official serving since last more than 5 to 7 years may not succeed in the GPSC Selection because of recent changes in the system, developed state of examination, general knowledge papers etc. Seasoned advocates or a Judge serving since years even may not succeed in a very formal examination by GPSC because of recent change and methodology of test. However, all these points, examples and illustrations brought to the notice of this Court though are attractive, but are found mostly hypothetical and inconsistent with the settled proposition of law. So, these arguments are not accepted.

75. The petitioners who are declared successful by GPSC and included in the select list if are declared unsuccessful and their prayer, for the sake of arguments is not accepted, even than the same would not create any legal scope for regularisation of Lecturers serving on ad hoc basis. It is not accepted that the appointment of GPSC selected candidates would be also of ad hoc nature because requirement of clearance of SLET or NET test was

not incorporated as one of the conditions in the advertisement. As per the settled legal proposition of the scheme, it would not be obligatory on the part of a teacher who is appointed as a college teacher to clear such a test. Clearance of such a test is not a condition precedent. So, this is not a case where State Government intends to replace other set of ad hoc teachers.

76. This Court is supposed to think about the plea taken by the GPSC selected candidates in their respective petitions. This is not a case where doctrine of tampering justice with mercy should be applied and the say of legitimately selected candidates should be ignored. This is not a case of daily wagers or Class:IV employees. Post of Lecturer in government colleges is within the purview of GPSC and is a respectable civil post. So, the arguments based on similar theory is not found convincing. On the contrary, the principles of "legitimate expectation" put forward by the candidates selected by the GPSC has much more strength. In the field of service jurisprudence also, the principles of "legitimate expectation" can be applied as argued by Mr. Anjaria and it should be made applicable especially in favour of those who are working as ad hoc Lecturers, initially working either as Teachers or as Laboratory Assistants etc. in the Education Department and have got themselves enlisted through selection by the GPSC. The persons who are working as ad hoc Lecturers and have appeared in response to the advertisement and have successfully cleared the test for selection and are included in the list of selectees, also should be treated on the same footing. So, obviously those who have failed and not included in the select list, cannot be permitted to continue on the post. However, such ad hoc Lecturers can be continued if no GPSC selectees are available against their respective posts. It would not be justified, considering the totality of facts and circumstances of the case that such Lectures should be relieved or terminated even by keeping the posts vacant. Though the ld. Senior Counsel Mr. Harubhai Mehta has advanced good logical arguments in reference to Rule 16 of 1967 Rules, but the principle propounded in decisions of the Apex Court in the case of Mr. Santosh Kumar Verma & Ors. v/s State of Bihar, JT 1997 (2) SC 97 (supra) and in the case of D.D. Upadhyay (supra), come in the way of all the ad hoc appointees. The lien holders cannot be treated as a separate class in the group of ad hoc Lecturers serving in the government colleges because all of them are appointed on their respective posts for the subject against the requirement of the government and so when all ad hoc Lecturers if are to be relieve against

the available GPSC selected candidates, then lien holders, merely because they were serving with the Education Department in a different status or category, cannot be put to any disadvantage at the time of relieving such ad hoc Lecturers. An attempt to divide ad hoc Lecturers serving at present in government colleges in two different categories i.e. (i) Ad hoc Lecturers holding Lien, and (ii) Ad hoc Lecturers other than those not holding lien, is neither found legal nor rational because the same is not a valid basis. It is neither based on qualification nor on difference of categoriess. It also suggests the absence of reasonable nexus with the object of choosing most suitable persons or group of persons to mann the post. Of course, this does not suggest any arbitrarinss, but this stand smecks of unreasonable adjustment resulting into unfair artificial classification. First affidavit filed by the government promises all or maximum number of ad hoc Lecturers for regularisation against law and constitutional obligation of the respondent State and the second affidavit suggests something disadvantageous to one class as if they are serving in different cadre or category. All ad hoc Lecturers are treated as equal initially and subsequently at all stages while dealing with their salary, allowances etc. and for all other purposes. So, the stand of the respondent State to send all the lien holder ad hoc Lecturers back is not found acceptable and all ad hoc Lecturers shall have to be treated as one calss for all purposes.

77(a) Considering the totality of facts and settled legal proposition in this field of service jurisprudence, prayer for continuation of service directly or indirectly made before this Court is not accepted. So, such or similar reliefs prayed by the Lecturers presently serving on ad hoc basis are hereby rejected. Therefore, interim relief, if granted to any of the ad hoc Lecturers stands vacated.

(b) Respondent State is entitled to and is under statutory obligations to appoint Lecturers selected and recommended by the GPSC in each subject against the available vacancies advertised. They shall be replaced vice ad hoc Lecturers in the respective subjects for which they have been selected.

(c) It is stated that GPSC has completed the process of selection and list of selected candidates is prepared and sent to the State Governemnt. If GPSC has not finalised the list, then respondent GPSC is hereby

directed to finalise the list and send it to the State Government with recommendations for appointment of selectees at the earliest and preferably within one week from the receipt of writ of this order.

(d) The State Government, obviously is directed to take further appropriate steps in consonance with the recommendations made by the GPSC within two to four weeks from the date of receipt of such final list of candidates recommended by the GPSC.

(e) If such list is already sent to the Government and the same is with the Government, then implementation thereof as per the policy of the government be made within aforesaid time period from the date of receipt of writ of this order. As per the list of documents supplied by the ld. GP Mr. A.D.Oza and referred by ld. Advocate General Mr. Shelat, GPSC has selected 335 (three hundred and thirty five) candidates and 99 of them have already been appointed. Hence, these observations and directions so far as remaining 236 GPSC selectees shall have to be complied with.

(f) The say of the State Government in the affidavit submitted during the course of submissions advanced by the ld. Advocate General Mr. Shelat and ld. Govt. Pleader Mr. Oza that all lien holders -ad hoc appointees shall be repartriated or sent to their respective posts with a view to adjust the maximum number of ad hoc Lecturers selected by the Committee is neither found legal nor equitable and hence this submission is not accepted.

(g) The State, therefore, is directed to treat all ad hoc Lecturers as one class while appointing and adjusting the GPSC selected and recommended candidates. Number of jobless persons may be minimised, but this should not result into miscarriage of justice.

(h) So, the principle of "last cum first go" shall have to be applied and, therefore, the State is directed accordingly. However, it will be open for such lien-holders to go to their respective department and posts voluntarily making such a request in writing. If such a request is made, then such teachers in the Education Department may be sent back to their original posts subject to other observations and directions issued by this Court. No formal relilef is required to be granted to the petitioner No.8 of Spl.C.A. 5154/2001.

(i) Each and every Lecturer serving at present on ad

hoc basis may be treated as surplus as submitted by ld. Advocate General and in accordance with the reply affidavit dated 30.8.2001. It is, however, clarified that they would not be entitled to regular salary or other financial advantage etc. including the pay protection, but they shall be entitled to pray for fresh appointment on priority basis against the available vacant posts of Lecturers in their respective subjects till GPSC selected candidates are made available. They shall also be entitled to apply before the GPSC to compete for two continuous attempts for the post of Lecturer in government colleges in their respective subjects praying/ claiming for age relaxation, if he or she is otherwise qualified, provided such ad hoc appointees have put on five years service on the date of this judgment. For computing this period of five years, formal breaks in service during summer vacation period may be ignored. Even completion of period of five years on account of interim protection granted by the Court, should be considered as continuous service for the purpose of computation. While relieving ad hoc Lecturers against GPSC selected and recommended candidates, seniority in the concerned subject should be considered Statewise and not collegewise. In the same way, relieved ad hoc Lecturers treated as Surplus without formal interview, can be appointed as Lecturers in their respective subjects against the available vacancies till fresh recruitment procedure is initiated by the respondent State and GPSC reaches to its logical end. This would prevent favourable fresh appointments on ad hoc basis so also future litigations.

(j) State of Gujarat and respondent GPSC shall appropriately relax the qualification as to age in the cases of ad hoc Lecturers individually while scrutinising the applications and finalise the list of selected candidates in the cases of all ad hoc Lecturers permitting them to appear and to compete in two continuous attempts before GPSC recruitment procedure as aforesaid. Ad hoc Lecturers who have cleared the examination of M.Phil or are conferred with Doctorate viz. Ph.D or recognised Post Graduate Teachers, the Government as well as GPSC shall make all endeavour for relaxation in educational qualification giving details of experience and service record to UGC. As UGC is not a party before this Court, no appropriate directions can be issued by this Court to UGC, but I am inclined to state that if such a requested by the State Government if is received by the UGC, the same may be considered sympathetically so that such ad hoc Lecturers can be permitted to appear before GPSC in fresh recruitment

procedure which may be initiated by the government and GPSC in future, but submissions to issue direction that the respondent may be asked to relax educational qualification and permit them to appear in interview, made in general, is not accepted.

(k) Ad hoc Lecturers who are before this Court and enjoying interim relief shall be treated equally and at par with all similarly situated ad hoc appointees and interim relief granted in their favour shall stand merged/modified as per the final order. Nobody shall be sent back or relieved, working at present on ad hoc basis, unless GPSC selected and recommended candidates is made available and is ready to take over. However, such continuance in service shall not have effect of regularisation and they shall remain as ad hoc till such GPSC selected candidates is made available. The State Government is directed to take immediate appropriate steps to avoid multiplicity of proceedings and frustration and humiliation while placing and appointing GPSC selected candidates in their respective subject and State Government shall consider the claim of seniority of ad hoc Lecturers serving at present and included in the list prepared by GPSC broadly accepting the principles propounded by the Apex Court in the case of Vidya Dhar Sharma v/s G.B.Patnayak & Others, 2001 AIR SCW 2464.

(l) Spl.Civil Application No.5436/2001 is dismissed as per the submissions made and as no formal relief is prayed by the petitioner.

State Government is directed to see that lien holders who are relieved and has to go to their respective parent department, their seniority is fixed in reference to the seniority list in their respective cadre in the parent department as it has been pointed out that their names are not reflected in the respective seniority list. They be placed appropriately. Obviously therefore, they will be entitled to all benefits including placement to the higher post in the department and increase of pay in reference to the pay-scale & allowances given to his next immediate junior. Their cases may be considered sympathetically in putting them at convenient stations or at nearby area or district if the same is not otherwise administratively inconvenient or creating undue hardships to other teachers or staff members. The Court is aware that no such formal relief has been prayed by ad hoc Lecturers holding lien in this regard, however, this Court has issued these directions and has made appropriate observations as the High Court can grant appropriate relief or mould the same

appropriately with a view to do substantive justice. I have considered the submissions made by ld. Govt. Pleader Mr. Oza and ld. counsel for the parties on this point. It will be open for the State Government to appoint and/or continue such surplus Lecturers if the substantive change is made in the workload by UGC/Univeristy or by the State Government as a matter of policy and against the vacancies available on starting of new colleges for which GPSC candidates are yet not available, till regular recruitment.

78. Facts pleaded in each petitions are considered and decided by this common judgment and these petitions are finally disposed of subject to the observations made and directions issued and reliefs prayed contrary to or inconsistant with the above observations and directions stands rejected. No points otherwise referred to and discussed herein above, are advanced and pressed by the parties appearing in all these petitions.

79. It is clarified that while implementing the above directions and observations made by this Court in the judgment, the failure in the test -examination conducted by the GPSC earlier would not come in the way of ad hoc appointees while claiming continuation in services as ad hoc Lecturers on the strength of their seniority amongst other ad hoc Lecturers in the department or their right to appear before the GPSC for the post held and to compete in two continuous attempts under the status of surplus.

80(i) Spl.Civil Application Nos. 2682, 2677, 2674, 2672, 2671, 2668, 2665, 2664, 2768,2747, 2726,2710,2708,2706, 2395, 2686, 5154 all of 2001 are hereby allowed. Rule is made absolute in each petition to the aforesaid extent i.e. the petitions filed by the GPSC Selected Candidates are concerned. In view of orders and directions issued, no formal further orders are passed in Spl.C.A.Nos. 4396, 4602, 5215, 3023, 4310, 4102, 4724 to 4730, 5626, 7234, 2992, 3807, 5058, 8943, and 2988 all of 2001, 799, 820 and 823 all of 2000, 7501 and 7502 both of 1999, are hereby dismissed. Spl.C.A. No. 5436 of 2001 is dismissed as not pressed. Rule is discharged so far as these petitions are concerned. Civil Applications filed by the State praying vacation of interim relief are allowed in terms of the observations made above and other Civil Applications to grant interim protection-relief filed by ad hoc Lecturers in respective petitions, stand disposed of subject to limited protection and privilege granted by observations made in this judgment. For short, Civil Applications preferrd in

relevant respective Spl.Civil Applications stand disposed of accordingly.

15-7-2002 [C.K. BUCH, J]
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FURTHER ORDER

Learned Counsel appearing for the respondents in SCA No. 2395 of 2001 and 2992 of 2001 and the learned counsel appearing for the Lecturers at present serving on ad hoc basis have prayed that the existing interim relief which has been vacated by the Court should be continued for two weeks, as they are intending to approach the Appellate Bench. In view of the observations and directions made by the court in para-77 of this decision and the facts that Civil Applications for vacating the interim relief made by the State Government have been allowed, the request is not accepted in view of the totality of the facts and circumstances of the case.

15-7-2002 [C.K. BUCH, J.]

mandora/